



# California Regulatory Notice Register

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APRIL 29, 2005

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.*

### TITLE 2. STATE ALLOCATION BOARD

THE STATE ALLOCATION BOARD  
PROPOSES TO AMEND REGULATION  
SECTIONS 1859.51 AND 1859.147, ALONG  
WITH AN ASSOCIATED FORM, TITLE 2,  
CALIFORNIA CODE OF REGULATIONS,  
RELATING TO LEROY F. GREENE SCHOOL  
FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections, along with an associated form, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

#### AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing amendments to two regulation sections under the authority provided by Sections 17070.35 and 17075.15 of the Education Code. The proposals interpret and make specific reference to Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, and 17078.27 of the Education Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998,

which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The Critically Overcrowded School (COS) Facilities Program was established by Assembly Bill 16, Chapter 33, Statutes of 2002. It provides funding to relieve overcrowding on severely impacted school sites, which helps applicant school districts accommodate the increased costs associated with urban construction. The initial emergency regulations for the COS Program were approved by the OAL on November 4, 2002.

Through the COS Program, districts have the ability to secure a reservation of funds for a proposed school project prior to having all of the necessary State agencies' approvals. The Program allows qualified districts to set aside funds for a project in advance of the site selection and agency approvals necessary for schools in critically overcrowded areas. These districts then have four to five years to meet all requirements of the SFP needed in order to convert to a final apportionment for new construction.

Proposed amendments to the SFP regulations were adopted by the SAB on March 30, 2005, implementing provisions of Assembly Bill (AB) 2950 (Goldberg), Chapter 898, Statutes of 2004, that relate to the conversion of COS Program Preliminary Apportionments to Final Apportionments. These amendments apply to COS projects that were funded out of the Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47). The following regulation sections are amended to incorporate the provisions of law:

Existing Regulation Section 1859.51 explains how a school district's baseline eligibility for new construction will be adjusted based upon any of 15 specific criteria regarding enrollment, classrooms, loading standards for severely and non-severely disabled pupils with exceptional needs, approved audit findings, and other specific factors impacting eligibility. The proposed amendments add a criterion allowing a new construction eligibility adjustment for districts with high school attendance areas (HSAAs).

Existing Regulation Section 1859.147 provides the criteria required for a school district to convert its COS Program Preliminary Apportionment to a Final Apportionment, thereby showing sufficient new construction eligibility at the time of conversion. The proposed amendments provide alternate criteria for districts, including HSAAs, to justify new construction eligibility for conversion to a Final Apportionment. In addition, this section provides the ability for districts that are ready to convert now to submit an application on or after a specific date and obtain a place in line for funding by the SAB.

Existing SAB Form 50-01, *Enrollment Certification/Projection*, is used by school districts to provide California Basic Educational Data System (CBEDS) enrollment data and to calculate SFP eligibility using the Cohort Survival Enrollment Projection under the SFP. The proposed amendments add new instructions and a data field to allow a COS Program HSAA district to report data for pupils residing within the HSAA boundary ("residency data") to justify new construction eligibility for conversion to a Final Apportionment. Additional supporting documentation is required when submitting this form when electing to justify eligibility utilizing the alternative method.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.

- The SAB has made an initial determination that there will be no impact on housing costs.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These regulations only apply to school districts for purposes of funding school facility projects.

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action.

Written comments submitted via U.S. mail, e-mail or fax, must be received at the OPSC no later than June 13, 2005 at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulation  
Coordinator

Mailing Address: Office of Public School  
Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.



The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

#### **SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE**

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### **RULEMAKING FILE**

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory actions. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested

from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

### **TITLE 4. BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION**

NOTICE IS HEREBY GIVEN that the Bureau of Home Furnishings and Thermal Insulation (hereafter "Bureau") is proposing to adopt regulations establishing a fee schedule to recover laboratory testing and inspection costs as more fully described in the Information Digest below. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at two hearings to be held:

#### **NORTHERN CALIFORNIA**

**JUNE 14, 2005**

**10:00 a.m.**

**DCA Hearing Room**

**400 R Street**

**Sacramento, California 95814**

#### **SOUTHERN CALIFORNIA**

**JUNE 16, 2005**

**10:00 a.m.**

**So. Coast Air Quality Management Dist.  
Room CC2**

**21865 E. Copley Drive**

**Diamond Bar, California 91765**

If possible, please notify the Bureau's Contact Person listed on this notice of your intention to attend and present oral testimony at the public hearings. This will allow the Bureau to determine if time limits will be necessary for each attendee's comments. All comments will be accepted regardless of whether or not the Bureau has been notified of a presenter's attendance.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received in the Bureau's office no later than 5:00 p.m. on June 20, 2005 or must be received by the Bureau at the hearings. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

# AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 19034 and 19161 of the Business and Professions Code, and to implement, interpret or make specific Sections 19213 and 19213.1, of said Code, the Bureau is considering changes to Title 4, Division 8, of the California Code of Regulations as follows:

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19213 and 19213.1 authorizes the director to establish a fee rate schedule to cover the costs of testing and inspections necessary to investigate and enforce compliance by its licensees.

1. Adopt Section 1383.7—This proposed regulation would establish a fee schedule to recover costs of laboratory testing and inspections necessary to investigate and enforce compliance as it relates to sellers or manufacturers of non-compliant products.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: None

Business Impact: The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting California businesses.

Impact on Jobs/New Businesses: The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: Businesses that manufacture, sell, or sanitize non-compliant products in California would be subjected to the following compliance fees:

### Laboratory Fees:

- 1) Component Testing (Polyurethane Foam, Fabric, Plumage, etc.)—\$200.00 for each component.
- 2) Completed Articles (Upholstered Chair, Sofa, Pillow, Mattress, Insulation Product, etc.)  
\$300.00—TB 106  
\$300.00—TB 116  
\$500.00—TB 133  
\$500.00—TB 603  
\$500.00—TB 117

- 3) Inspections  
\$200.00—Labeling  
\$500.00—Sanitization

### Inspection Fees:

\$200.00 for the first identified element of non-compliance  
\$50.00 for each additional element  
\$500 maximum for any one inspection

Effect on Housing Costs: None

Effect on Small Business: The Bureau of Home Furnishings and Thermal Insulation has determined that the proposed regulations may significantly affect small businesses that manufacture, sell, or sanitize non-compliant products.

## CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative that it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearings.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the

Bureau of Home Furnishings and  
Thermal Insulation  
3485 Orange Grove Avenue  
North Highlands, California 95660

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the web site, [www.bhfti.ca.gov](http://www.bhfti.ca.gov).

#### CONTACT PERSON

Inquiries concerning the proposed administrative action may be direct to:

Name: Sophia Azar, Program Analyst  
Address: 3485 Orange Grove Avenue  
North Highlands, California 95660  
Telephone: (916) 574-0282  
Fax: (916) 574-2043  
E-mail: Sophia\_Azar@dca.ca.gov

#### WEB SITE ADDRESS

Materials regarding this proposal can be found at [www.bhfti.ca.gov](http://www.bhfti.ca.gov).

### TITLE 8. DIVISION OF LABOR STANDARDS ENFORCEMENT

#### NOTICE OF PROPOSED RULEMAKING

The Division of Labor Standards Enforcement ("DLSE") proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

The DLSE will hold a public hearing starting at 9:00 a.m. on Tuesday, June 21, 2005, in the Auditorium of the Ronald Reagan State Building located at 300 South Spring Street, Los Angeles, CA 90013. The Auditorium is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The DLSE requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the DLSE. The written comment period closes at **5:00 p.m. on Tuesday, June 21, 2005**. The DLSE will consider only comments received at the DLSE offices by that time. Submit comments to:

Allen Perlof  
Deputy Chief Labor Commissioner  
Division of Labor Standards Enforcement,  
9th Floor West  
P.O. Box 420603  
San Francisco, CA 94142

#### AUTHORITY AND REFERENCE

Labor Code Section 98.8 authorizes the DLSE to adopt the proposed regulations, which would implement, interpret, or make specific Division 2, Part 8.5,

Chapters 1 through 4, Sections 2050 through 2064, inclusive, and Section 2066 of the Labor Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The DLSE proposes to adopt Sections 13680 through 13693, inclusive, in Title 8 of the California Code of Regulations (CCR). These sections concern the registration of employers engaged in the business of car washing and polishing.

The purpose of the proposed regulations is to define certain terms, implement the scheme for registration, both initial and renewal, delineate the conditions that must be met before an employer can be registered, implement the procedure for proceeding against the employer's surety bond, clarify the annual registration fee and assessment, establish that a registration cannot be transferred, and the circumstances when a registration is void, implement a citation for failing to register, and a process whereby an employer can appeal such citation, and establish the procedure for obtaining damages from the Car Wash Worker Restitution Fund.

Labor Code Section 2054 provides that every employer engaged in the business of car washing and polishing must register annually with the Labor Commissioner. Labor Code Sections 2055 and 2061, respectively, set forth conditions that must be satisfied before the Labor Commissioner can permit an employer to register or renew a registration; that is, the employer has presented proof to the Labor Commissioner of compliance with the local government's business licensing or regional regulatory requirements, the employer has obtained a surety bond for the benefit of any employee damaged by his, her, or its failure to pay wages, interest on wages, or fringe benefits, or damaged by a violation of Labor Code Section 351 (gratuities) or 353 (records regarding gratuities), the employer has documented proof that a current workers' compensation insurance policy is in effect, the employer has paid the annual registration fee and assessment, and the employer has completed and executed an application in a form prescribed by the Labor Commissioner. Additionally, Labor Code section 2062 provides that the Labor Commissioner may not register or renew the registration of an employer if any of the following circumstances exist: (a) the employer has not fully satisfied any final judgment for unpaid wages, (b) the employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code, or the Employment Development Department has made an assessment for those unpaid contributions that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions, and (c) the employer has failed to remit the amount of Social Security and Medicare tax contributions required by

the Federal Insurance Contributions Act to the Internal Revenue Service, and the employer has not fully paid the amount or delinquency for those unpaid contributions. Labor Code Section 2059 establishes an annual registration fee of \$250.00 for each branch location, and an annual assessment of \$50.00 for each branch location. The \$50.00 annual assessment shall be deposited in the Car Wash Worker Restitution Fund. Labor Code Section 2064 establishes a civil fine against an employer who fails to register, and Labor Code Section 2066 provides for liability of a successor employer.

#### Section 13680. Definitions.

Section 13680 will contain definitions for the terms/phrases “business days,” “branch,” “damaged,” “other related damages,” and “registration packet.” “Business days” is being defined in order to clarify the concept in those situations in which it is used. The DLSE is proposing that “business days” have the same meaning as set forth in California Civil Code Section 9. “Branch” is defined because such term is not commonly used in the car washing and polishing industry. The DLSE is proposing that “branch” mean each separate location where an employer engages in car washing and polishing operations as specified in Labor Code Section 2051(a). “Damaged” is defined to clarify the concept in those situations where the term is used. The DLSE is proposing that “damaged” means the suffering of a loss or diminution of what is the employee’s own. “Other related damages” is defined to clarify the concept in those situations where the phrase is used. The DLSE is proposing that “other related damages” means a loss suffered by an employee or diminution of what is the employee’s own by reason of some action or inaction on the part of the employer, other than the employer’s failure to pay wages and penalties. “Registration packet” is defined to clarify the concept in those situations where the phrase is used. The DLSE is proposing that “registration packet” means certain documents and items specified on an instruction sheet that must be submitted to the Labor Commissioner in order for an employer’s application for registration to be processed.

#### Section 13681. Recordkeeping.

Section 13681 will specify Labor Code sections pursuant to which an employer is required to keep certain records, the minimum amount of time the records must be kept, the location(s) where the records must be kept, and that the records must be available for inspection or copying, or both, by the Labor Commissioner. Additionally, Section 13681 will specify the consequences an employer faces if he, she, or it fails to produce records requested by the Labor Commissioner, or provides falsified records. Pursuant

to Labor Code Section 2052, employers engaged in the business of car washing and polishing are required to keep records, some of which differ from those required of employers in other industries. The DLSE is proposing that the records required by Section 2052 be maintained at the place of employment or at a central location within the State of California, and that upon a request from the Labor Commissioner, they be made available for copying or inspection, or both. The DLSE is also proposing that the failure to provide requested records, or the providing of falsified records, is grounds for the suspension or revocation of an employer’s registration, or denial of an employer’s application for registration.

#### 13682. Conditions for Registration, Initial and Renewal.

Section 13682 will specify the conditions an employer must satisfy in order for the Labor Commissioner to issue a registration. The DLSE is proposing that the employer submit to the Labor Commissioner (1) a completed and signed Application for Registration—Car Washing and Polishing, DLSE Form 666 (08/04); (2) a surety bond issued by a surety company licensed to do business in the State of California in an amount specified by the Labor Commissioner; (3) proof of compliance with the local government’s business licensing or regional regulatory requirements; (4) either (a) a copy of the certificate from the Director of the Department of Industrial Relations consenting to the employer being self-insured against liability to pay compensation under the State’s workers’ compensation laws or (b) a certificate of insurance evidencing that a current workers’ compensation insurance policy issued by an insurance company licensed to do business in the State of California is in effect; (5) the annual registration fee required by Labor Code Section 2059(a); (6) the annual assessment required by Labor Code Section 2059(b); and (7) a complete registration packet. Additionally, the employer must have complied with any citation issued by the Labor Commissioner after the citation became final and was served on the employer.

#### 13683. Annual Registration Fee and Assessment; Proof of Registration.

Section 13683 will specify that an employer must pay an annual registration fee for each branch it operates, and that such fee may be periodically adjusted for inflation. The Section will also specify that an employer must also pay an annual assessment for each branch it operates, and that the Labor Commissioner will issue a certificate for each branch registered by an employer.



13684. Registration, Initial and Renewal.

Section 13684 will specify that registration is annually, except for the first renewal, which may be less than 12 months or not more than 18 months, and that the registration fee will be prorated accordingly. The Section will also specify that an employer need only submit one application for all branches, and that the initial registration process will be on a staggered basis. Because a large number of employers engaged in the car washing and polishing business are concentrated in just a few counties, the DLSE is proposing that the initial registration be staggered by county. The DLSE is also proposing that if an employer operates branches in more than one county, the registration packet, which covers all branches, will be submitted during the time period specified for the branch requiring the earliest submission. Further, the DLSE is proposing that in order to distribute registration dates evenly throughout the year, the Labor Commissioner may, with respect to the first renewal of registration only, shorten to less than 12 months or lengthen to not more than 18 months the period of registration, and prorate the annual fees accordingly.

13685. Transfer of Registration Prohibited.

Section 13685 will specify that an employer may not transfer its registration to another person. The DLSE is proposing that "person" includes an individual, association, organization, partnership, joint venture, business trust, limited liability corporation, or private entity of any character.

13686. Registration Void, When

Section 13686 will specify the conditions under which an employer's registration becomes void. The DLSE is proposing that an employer's registration will become void when the employer (1) ceases to engage in the car washing and polishing business; (2) changes its form of legal entity; (3) transfers its registration; or (4) when the Labor Commissioner revokes and employer's registration. The DLSE is also proposing that upon voidance of a registration, the employer will surrender to the Labor Commissioner the certificate of registration for each branch location, and that if voidance is due to a change of legal entity, the new legal entity must submit a complete registration packet, including the annual registration fee and assessment, in order for a new certificate of registration to be issued.

13687. Failure to Obtain Tax Clearance.

Section 13687 will specify that an employer's failure to obtain a tax clearance from the Internal Revenue Service constitutes a ground for the Labor Commissioner to deny an application for registration, including a renewal.

13688. Temporary Registration.

Section 13688 will specify the circumstance under which the Labor Commissioner may issue a temporary registration. The DLSE is proposing that if the Labor Commissioner determines that the Internal Revenue Service has issued an employer a temporary tax clearance, he or she may issue the employer a temporary registration that runs concurrently with the temporary tax clearance, and expires when the temporary tax clearance expires. The DLSE is also proposing that if upon the expiration of a temporary registration the Labor Commissioner issues an employer a regular registration, the length of time during which the temporary registration was in effect will be applied to and counted against the time period for the regular registration.

13689. Citation for Failure to Register.

Section 13689 will specify that the Labor Commissioner may issue a citation and impose a civil fine if an employer operates its business without registering. The DLSE is proposing that if upon inspection or investigation it determines that an employer has failed to register, a citation may be issued and a civil fine imposed. The DLSE is also proposing that such a citation may be served personally or by registered mail.

13690. Failure to Comply with Citation for Failure to Register.

Section 13690 will specify that an employer's failure to comply with a citation which is issued because the employer failed to register, shall, after the citation is final and has been served on the employer, constitute a ground for the Labor Commissioner to deny the employer's application for registration, including a renewal.

13691. Appeal of Citation for Failure to Register.

Section 13691 will specify the procedure and proceedings that apply if an employer desires to contest a citation issued against it because it failed to register. The proceeding will be an informal hearing conducted in accordance with the adjudication provisions of the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400 of the Government Code. The DLSE is proposing that a cited employer who appeals the citation and fails to appear at the time and place of the hearing shall be deemed to have withdrawn its appeal, and the citation will then constitute a final order of the Labor Commissioner, which is not subject to administrative review. The DLSE is also proposing that if a cited employer does not appeal the citation, the Labor Commissioner may file a certified copy of the citation or proposed assessment of civil fine with the superior court in a

county in which the employer has property, or has or had a place of business, and the clerk of the court shall enter a judgment thereon.

13692. Immediate Family Member Defined.

Section 13692 will, for purposes of subdivision (d) of Labor Code Section 2066 define the phrase "immediate family member." The DLSE is proposing that "immediate family member" means spouse, domestic partner, cohabitant, child, stepchild, grandchild, parent, stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, great grandparent, brother, sister, half-brother, half-sister, step-sibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin.

13693. Action Against Bond, Inadequacy of Bond, Cancellation of Bond, Retention of Bond.

Section 13693 will specify when the Labor Commissioner or an employee may proceed against an employer's surety bond, that the Labor Commissioner may suspend or revoke an employer's registration, or deny an application for registration, if at any time the employer fails to provide a surety bond that meets all of the requirements of paragraphs (1) and (2) of subdivision (b) of Section 13682, and that if the surety bond is cancelled or terminated, the employer may not conduct any business until it obtains a new surety bond that meets all of the requirements of paragraphs (1) and (2) of subdivision (b) of Section 13682. Additionally, this Section will specify that the Labor Commissioner will retain the original of the bond for no less than three years after the employer ceases to engage in the business of car washing and polishing.

**DOCUMENTS INCORPORATED  
BY REFERENCE**

The following forms are incorporated by reference in Sections 13680 and 13682. These forms are not published in Title 8, California Code of Regulations, because it would be impractical and cumbersome to publish these documents in the Code of Regulations:

Car Washing and Polishing Registration

Application, DLSE 666 (08/04)

Car Wash Bond, DLSE 668 (09/04)

Copies of these forms are available to the public for review Monday through Friday, except State holidays, from 8:00 a.m. to 4:30 p.m. at the Division of Labor Standards Enforcement's Headquarters office located at 455 Golden Gate Avenue, 9th Floor West, San Francisco, California.

**DISCLOSURES REGARDING  
THE PROPOSED ACTION**

The DLSE has made the following initial determinations:

- Mandate on local agencies and school districts: None.

- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Cost impacts on a representative private person or business: The DLSE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
  - (1) Create or eliminate jobs within California;
  - (2) Create new businesses or eliminate existing businesses within California; or
  - (3) Affect the expansion of businesses currently doing business within California.
- Significant affect on housing costs: None.
- Small business determination: The DLSE has determined that the proposed regulations affect small business.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5, subdivision (a)(13), the DLSE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The DLSE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

**CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Allen Perlof  
Division of Labor Standards Enforcement,  
9th Floor West  
P.O. Box 420603  
San Francisco, CA 94142  
Telephone: (415) 703-4810

The backup contact person for these inquiries is:

Lucia Ceja  
Division of Labor Standards Enforcement,  
9th Floor West  
P.O. Box 420603  
San Francisco, CA 94142  
Telephone: (415) 703-4810

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Perlof at the above address.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DLSE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Headquarters office located in the Hiram Johnson State Building at 455 Golden Gate Avenue, 9th Floor West, San Francisco, California. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Car Wash Bond, DLSE 668 (09/04), the Car Washing and Polishing Registration Application DLSE 666 (08/04), the initial statement of reasons, and the Economic and Fiscal Impact Statement, Form STD. 399. Copies may be obtained by contacting Allen Perlof at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the DLSE may adopt the proposed regulations substantially as described in this notice. If the DLSE makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the DLSE adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Allen Perlof at the address indicated above. The DLSE will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Perlof at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department Of Industrial Relations' website at <http://www.dir.ca.gov/DIRRulemaking.html>.

### TITLE 8. DIVISION OF LABOR STANDARDS ENFORCEMENT

#### NOTICE OF PROPOSED RULEMAKING

The Department of Industrial Relations ("DIR") proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

The DIR will hold a public hearing starting at 9:00 a.m. on Tuesday, June 21, 2005, in the Auditorium of the Ronald Reagan State Building located at 300 South Spring Street, Los Angeles, CA 90013. The Auditorium is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The DIR requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the DIR. The written comment period closes at **5:00 p.m. on Tuesday, June 21, 2005**. The DIR will consider only comments received at the DIR offices by that time. Submit comments to:

Allen Perlof  
Deputy Chief Labor Commissioner  
Department of Industrial Relations  
Division of Labor Standards Enforcement,  
9th Floor West  
P.O. Box 420603  
San Francisco, CA 94142

#### AUTHORITY AND REFERENCE

Labor Code Section 2065 authorizes the DIR to adopt the proposed regulation, which would implement, interpret, or make specific Division 2, Part 8.5, Chapter 2, Section 2065 of the Labor Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The DIR proposes to adopt Sections 13694, in Title 8 of the California Code of Regulations (CCR). This section concerns the procedures necessary to



carry out the provisions of Labor Code Section 2065 that relate to the making of a claim made for recovery from the Car Wash Worker Restitution Fund ("Fund").

The purpose of the proposed regulation is to establish the procedure an aggrieved employee must follow in order to make claim for recovery of monies from the Car Wash Worker Restitution Fund.

Labor Code Section 2065 establishes the Car Wash Worker Restitution Fund ("Fund"), and provides that \$50.00 of each registrant's annual registration fee, in addition to the annual assessment, be deposited into the Fund, along with 50 percent of all fines collected pursuant to Section 2064.

13694. Procedure for Obtaining Damages from the Car Wash Worker Restitution Fund, Disbursement of Monies from the Car Wash Worker Restitution Fund, Hearing.

Section 13694 will specify that the Labor Commissioner will determine which claims made for recovery from the Car Wash Worker Restitution Fund ("Fund") are accepted, and the amount of money, if any, to be disbursed. This Section will also specify the procedure a person must follow in making a claim for recovery from the Fund, the action the Labor Commissioner may take if he or she determines that a declaration required under this Section is insufficient to sustain a recovery from the Fund. Additionally, this Section will provide that the Labor Commissioner shall have the authority to order an investigatory hearing to determine the validity of a claim seeking recovery from the Fund, and the process for implementing and conducting the investigatory hearing. The DIR is proposing that before a person may make a claim for recovery from the Fund, he or she must first attempt to collect from the employer and the employer's surety bond, and that any claim that is made for recovery from the Fund must be in writing and include the information set forth in subdivision (b) of this Section.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

The DIR has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Cost impacts on a representative private person or business: The DIR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
  - (1) Create or eliminate jobs within California;
  - (2) Create new businesses or eliminate existing businesses within California; or
  - (3) Affect the expansion of businesses currently doing business within California.
- Significant affect on housing costs: None.
- Small business determination: The DIR has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the DIR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The DIR invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Allen Perlof  
Division of Labor Standards Enforcement,  
9th Floor West  
P.O. Box 420603  
San Francisco, CA 94142  
Telephone: (415) 703-4810

The backup contact person for these inquiries is:

Lucia Ceja  
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Please direct requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Mr. Perlof at the above address.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DIR will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the DLSE Headquarters office located at the Hiram Johnson State Building, 455 Golden Gate Avenue, 9th Floor West, San Francisco, California. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and the Economic and Fiscal Impact Statement, STD. 399. Copies may be obtained by contacting Allen Perlof at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the DIR may adopt the proposed regulations substantially as described in this notice. If the DIR makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the DIR adopts the regulations as revised. Please send requests for a copy of a modified regulation to the attention of Allen Perlof at the address indicated above. The DIR will accept written comments on the modified regulation for 15 calendar days after the date on which it is made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Perlof at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through the Department Of Industrial Relations' website at <http://www.dir.ca.gov/DIRRulemaking.html>.

## TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has

set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **June 16, 2005** at 10:00 a.m. in Council Chambers, First Floor of the Irvine City Hall, 1 Civic Center Plaza, Irvine, CA 92623-9575

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **June 16, 2005**, following the Public Meeting in Council Chambers, First Floor of the Irvine City Hall, 1 Civic Center Plaza, Irvine, CA 92623-9575

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

**BUSINESS MEETING:** On **June 16, 2005**, following the Public Hearing in Council Chambers, First Floor of the Irvine City Hall, 1 Civic Center Plaza, Irvine, CA 92623-9575

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **June 16, 2005**.

### 1. TITLE 8: CONSTRUCTION SAFETY ORDERS

Chapter 4, Subchapter 4, Article 29,  
Section 1720

**Concrete Pumps and Placing Booms**

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS

Chapter 4, Subchapter 7, Group 4,  
Article 24

Sections 3637, 3638, 3639, 3640,  
3642, and 3646

**Mast-Climbing Work Platforms**

A description of the proposed changes are as follows:

1. TITLE 8: CONSTRUCTION SAFETY ORDERS

Chapter 4, Subchapter 4, Article 29,  
Section 1720

**Concrete Pumps and Placing Booms**

INFORMATIVE DIGEST OF PROPOSED  
ACTION/POLICY STATEMENT OVERVIEW

This rulemaking proposal is being initiated in response to a Division of Occupational Safety and Health (Division) memorandum, dated August 13, 2003, with attached Form 9, Request for New, or Change in Existing Safety Order. The Division expressed concern regarding accidents that have occurred involving concrete pumping equipment.

Concrete pumping using truck-mounted concrete placing booms, trailer-mounted pumps and separate concrete placing booms is widely used in the construction industry due to its ability to quickly place concrete at points removed from the point of delivery to the jobsite. Direct concrete placement without re-handling improves the quality of the pour and requires less labor. Direct placement also reduces workplace congestion and can thus improve workplace safety. However, accidents involving concrete pumping equipment have occurred that include boom trucks overturning due to unstable ground, placing booms which contact high-voltage power lines, and operational failure of delivery system components, such as boom hose attachments and fittings, causing hoses to become whips or causing equipment or components to fall on unsuspecting workers below. Concern has also been expressed regarding the lack of structural inspections of boom parts that are exposed to structural fatigue and wear.

Neither Title 8 nor federal standards specifically address mobile truck-mounted concrete pumping equipment and placing booms. However, the State of Washington has developed standards (WAC 296-155-682) that address these hazards for concrete pumping equipment operated in Washington. A voluntary standard has also been developed by an industry association, the Concrete Pump Manufacturers Association (CPMA), CPMA 27-2000, Concrete Pumps, Placing Booms and Delivery Systems, which became effective September 16, 2003.

An ad hoc advisory committee, consisting of equipment manufacturers, inspectors, management and labor representatives was convened by Board staff on December 10–11, 2003, to develop standards for mobile truck-mounted concrete pumping equipment. This proposal is based substantially on a consensus proposal developed by the committee.

This proposed rulemaking action also contains non-substantive, editorial, reformatting of subsections, and grammatical revisions. These non-substantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the proposed text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

**Section 1720. Placement of Concrete.**

Section 1720 contains provisions for concrete buggies, pumpcrete systems, concrete buckets, ready-mix trucks, and formwork. It is proposed to amend existing subsection (b), Pumpcrete Systems, by clarifying existing text and adding provisions to address the safe operation, inspection, maintenance and repair of concrete pumps and placing booms.

**Subsection (b), Pumpcrete Systems.**

Existing subsection (b) requires that (1) pumpcrete or similar systems using discharge pipes be provided with pipe supports designed for 100 percent overload; and (2) compressed air hoses in such systems be provided with fail-safe joint connectors to prevent separation of sections when pressurized. It is proposed to amend these requirements and relocate them to new subsection (b)(3)(E) entitled “Delivery Systems.” It is also proposed to re-title subsection (b), “Concrete Pumps and Placing Booms.” The term “pumpcrete” is not commonly used in construction in California, or the United States, thus the application of the existing provisions are vague and unclear. The proposed amendments are for clarity purposes to ensure proper application of the standard.

**New Subsection (b)(1), Scope.**

New subsection (b)(1) is proposed to establish that subsection (b) applies to truck-mounted concrete boom pumps, trailer-mounted concrete pumps and separate concrete placing booms. The proposed amendment would clarify the application of provisions contained in subsection (b).

**New Subsection (b)(2), Definitions.**

New subsection (b)(2) is proposed to define certain terms included in the proposal. These terms include concrete delivery hose, control panel, delivery system, end hose, placing boom, and remote control. Defining

these terms would establish a common reference point to assist the regulated public and compliance officers in the proper application of the standards.

**New Subsection (b)(3), General.**

New subsection (b)(3) is proposed to prescribe standards for equipment identification and ratings, set-up and operation, controls, guarding, delivery systems, and clearances from high-voltage power lines.

**New Subsection (b)(3)(A), Equipment identification and ratings.**

New subsection (b)(3)(A) is proposed to establish minimum standards for critical design and manufacturing information, and to require that this information be included on durable identification plates on the concrete pump and placing boom, consistent with industry standards. These provisions would assist operators and inspectors in assuring that the subject equipment is inspected, maintained and operated in a safe manner.

**New Subsection (b)(3)(B), Set-up and operation.**

New subsection (b)(3)(B) is proposed to prescribe critical procedures for setting-up and operating concrete pumping equipment and placing booms. Specifically, it requires concrete pumping equipment and placing booms be set-up and operated in accordance with the manufacturer's operation and safety manuals, and these orders. It also requires that the manufacturer's operation manual be maintained in legible condition and be available to the operator during set-up and operation of the equipment. Moreover, it specifies that concrete placing booms shall not be used to drag hoses or lift other loads, and that concrete delivery hoses are not to be used as end hoses. An exception is proposed to permit delivery hoses to be used as end hoses for shotcrete operations only, in order to accommodate standard industry practice specific to this type of concrete placement. These provisions would establish minimum standards for safe set-up and operation of concrete pumping equipment and placing booms.

**New Subsection (b)(3)(C), Controls.**

New subsection (b)(3)(C) is proposed which requires that controls have their functions clearly marked; and if there are several control locations, the same operation shall only be possible from one location at a time. It also requires that controls be safeguarded from unintended operation, with an exception proposed for equipment manufactured prior to the effective date of the standard so as not to require potentially cost prohibitive retrofit of older equipment. These provisions would assure safe operation of

equipment and protect workers from unintended operation due to improperly or unclearly marked controls, or from inadvertent contact with the controls.

**New Subsection (b)(3)(D), Guarding.**

New subsection (b)(3)(D) is proposed which provides for machine guarding in accordance with manufacturers' specifications in order to prevent unintentional access to moving parts of the concrete pumping system, such as those found in the hopper. This amendment would require machine guarding consistent with manufacturer specifications in order to protect workers from the hazards of unguarded moving parts.

**New Subsection (b)(3)(E), Delivery Systems.**

New subsection (b)(3)(E) is proposed which incorporates amendments to existing subsections (b)(1) and (b)(2). These existing subsections pertain to discharge pipes and restraint of compressed air hoses. They are taken from 29 CFR 1926.702(e) for concrete pumping systems. Their origins, however, are obscure and their intent is unclear. Based on advisory committee input and communication with Federal OSHA, it is proposed to revise these provisions to require that (1) concrete pumping systems using discharge pipes be provided with pipe supports designed for twice the rated load, including concrete at 150 lbs/ft<sup>3</sup>; and (2) compressed air hoses, if used, be equipped with connecting ends that shall be chained or otherwise secured to prevent whipping in case of separation when pressurized. The term "100% overload" has been replaced with "twice the rated load," and the term "fail-safe joint connectors" has been repealed. Both "100% overload" and "fail-safe joint connectors" are repealed as these terms are not used or understood in the industry. The proposed amendments would clarify existing standards by utilizing terms that are used and understood in the industry.

**New Subsection (b)(3)(F).**

New subsection (b)(3)(F) is proposed which requires that the operation of concrete placing booms in proximity of overhead high-voltage lines be in accordance with Article 37 of the High-Voltage Electrical Safety Orders, except where the manufacturer's specifications may require greater clearances. The new subsection would also establish criteria for warning signs to be posted on the equipment to alert operators to minimum clearances for safe operation. The amendments would ensure that concrete placing booms are operated with sufficient separation distances from overhead high-voltage power lines to assure safety of workers and others in proximity to the operating boom.



**New Subsection (b)(4), Inspection, maintenance and repairs.**

New subsection (b)(4) is proposed which prescribes procedures and record keeping requirements for inspection, maintenance and repairs, as follows:

**New Subsection (b)(4)(A).**

New subsection (b)(4)(A) is proposed which requires that a qualified person visually inspect the machine's controls and functional mechanisms for maladjustment, damage or deterioration prior to daily use. Any condition that affects the safe operation would be required to be corrected promptly. Hoses, clamps and pipes would also be required to be inspected prior to use, and damaged or defective hoses, clamps or pipes prohibited. These amendments would ensure that concrete pumping equipment is regularly inspected by qualified persons and that any conditions that might affect safe operations are promptly corrected.

**New Subsection (b)(4)(B).**

New subsection (b)(4)(B) is proposed which requires that a preventative maintenance program be established and implemented in accordance with the manufacturer's specifications. This amendment would ensure that concrete pumps and placing booms be regularly maintained in accordance with established criteria.

**New Subsection (b)(4)(C).**

New subsection (b)(4)(C) is proposed which requires that inspection, maintenance and repairs be performed by a qualified person in accordance with the manufacturer's specifications and procedures. This amendment would ensure that inspections, maintenance and repairs are performed by a qualified person according to manufacturer specifications.

**New Subsection (b)(4)(D).**

New subsection (b)(4)(D) is proposed which requires that inspection records include the identification of components and parts inspected and tested, a description of test methods, results and repairs made, and the names and signatures of persons performing the inspections. The proposed amendment would improve worker safety by prescribing minimum documentation requirements for inspections, tests and repairs performed on concrete pumps and placing booms.

**New Subsection (b)(4)(E).**

New subsection (b)(4)(E) is proposed which requires that inspections and maintenance records be available for Division examination upon request. The

proposed amendment would ensure that records are maintained and are available for inspection by third parties if requested.

**New Subsection (b)(5).**

New subsection (b)(5) is proposed which establishes provisions for the set-up, operation, inspection, maintenance and repairs of equipment where the manufacturer is no longer in business and the manufacturer's specifications are no longer available. The proposed new subsection also prescribes minimum qualifications for persons specifying criteria for the set-up, operation, inspection, maintenance and repairs of the equipment, and for those actually performing the work. The proposed amendments would ensure the continued safe use of equipment where the manufacturer is no longer in business and the manufacturer's specifications are no longer available.

**COST ESTIMATES OF PROPOSED ACTION****Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

**Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

**Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Cost Impact on Private Persons or Businesses**

The Board anticipates that the cost impact which a representative private person or business entity is likely to incur in reasonable compliance with the proposed action is expected to be insignificant because only a very small number of rigs are likely to be affected. Furthermore, the cost impact per rig cannot be accurately determined. (See explanation under Part A and B of Attachment #1 of the STD. 399, Economic and Fiscal Impact Statement.)

**Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

**Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.



## DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

## EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no significant economic impact is anticipated.

## ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

## REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## 2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS

Chapter 4, Subchapter 7, Group 4,  
Article 24

Sections 3637, 3638, 3639, 3640,  
3642, and 3646

### Mast-Climbing Work Platforms

## INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Over the past several years, there has been constant growth in the use of mast-climbing work platforms (MCWP's) throughout California. These devices have found numerous applications in the construction and entertainment industries. There have been serious work-related injuries resulting from the misuse of these devices, including worker falls from elevated platforms, and structural failure and collapse of platforms. This rulemaking action is the result of requests by the Division of Occupational Safety and Health (Division) to amend standards for elevating work platforms and aerial devices to clearly include mast-climbing work platforms among elevating work platforms regulated in General Industry Safety Orders (GISO) Article 24. The Division initially submitted a Priority 2 Request For New, Or Change In Existing, Safety Order (Form 9), dated October 25, 2000. Subsequently, due to serious work-related injuries resulting from increasing use and misuse of these devices, the Division upgraded the request to Priority 1 via a supplemental request dated May 14, 2003.

An ad hoc advisory committee, consisting of members from management, labor, equipment manufacturers, equipment rental, and other interested parties, was convened on October 1, 2003. This proposal is based in large part on a consensus proposal developed with the assistance of the committee.

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

### Section 3637. Definitions.

“Elevating Work Platform.” The standard presently defines “elevating work platform” as “A device designed to elevate a platform in a substantially vertical axis.” The definition lists vertical towers and scissor lifts as examples. It is proposed to clarify that the definition of “elevating work platform” includes MCWP's by adding them to the list of examples. The effect of this modification will be to clarify that MCWP's are covered under GISO Article 24.

“Mast-Climbing Work Platform.” Section 3637 definitions do not presently include a definition for “mast-climbing work platform.” It is proposed to add a definition for mast-climbing work platform as “a powered elevating work platform or platforms, supported on one or more vertical masts, for the purpose of positioning personnel, along with necessary tools and materials, to perform their work.” The effect of this addition will be to clarify the scope of Article 24 for the regulated public.

**Section 3638. Equipment Instructions and Marking.**

It is proposed to rename this section “General Requirements” to more accurately indicate the contents. While this section currently contains provisions for equipment instructions and marking, it is not limited to those subjects. It also contains other provisions for training, assembly, maintenance, and operation. The effect of the proposed renaming will be to assist the regulated public in locating applicable provisions for elevating work platforms and aerial devices, including MCWP’s.

**Subsection (a).**

Existing subsection (a) requires that each aerial device and elevating work platform have a manual containing instructions for maintenance and operations, but does not specify where the manual is to be located; i.e., it is not clear whether it must be available on the device or whether it could be maintained in an off-site office not readily available to the operator. A new subsection (a)(1) is proposed to clarify that the required manual or manuals are to be maintained in a weather resistant storage location on the elevating work platform or aerial device. The effect of this amendment will be to clarify that required maintenance and operating instructions are to be readily available for those operating the device and that they are to be protected from the elements.

**Subsections (b)(1) and (b)(2.)**

Existing subsections (b)(1) and (b)(2) prescribe that aerial devices are to be conspicuously and legibly marked with verification that the device has been designed and manufactured in accordance with applicable ANSI standards. It is proposed to add verbiage to both subsections (b)(1) and (b)(2) to clarify that this provision also applies to elevating work platforms. The effect of this modification, coupled with the modified definitions, will be to clarify that marking requirements for aerial devices include elevating work platforms and MCWP’s.

Existing subsections (b)(1) and (b)(2) do not list a national consensus standard applicable for MCWP’s. It is proposed to add American National Standards Institute/Scaffold Industry Association (ANSI/SIA)

Standard A92.9-1993 to the list of standards. The effect of this amendment will be to clarify standards applicable for the design and manufacture of MCWP’s.

**Subsection (c)(2).**

Existing subsections (c)(2) and (c)(2)(A) prescribe instructions and markings to identify device capacity. It is proposed to combine (c)(2) and (c)(2)(A) into a single subsection (c)(2) since existing subsection (c)(2)(A) requires information not required by national consensus standards which could be misinterpreted to permit devices to be operated beyond the manufacturer’s rated limits. The effect of this modification will be to conform Title 8 with national consensus standards and to promote safe operation of these devices by clarifying capacity.

**Subsection (c)(3).**

Existing subsection (c)(3) and (c)(3)(A) prescribe instructions and markings to identify device travel height. It is proposed to combine (c)(3) and (c)(3)(A) into a single subsection (c)(3) since existing subsection (c)(3) is vague and is only clarified in the context of (c)(3)(A). The effect of this modification will be to clarify requirements for instructions and markings for platform travel height, consistent with national consensus standards.

**Subsection (c)(5).**

Existing subsection (c)(5) requires plates or markings to identify cautions or restrictions of operation or both. It is proposed to clarify that these are to be basic cautions or restrictions, as members of the advisory committee were concerned this could be interpreted to require a complete listing and that there would not be sufficient room for all the cautions and restrictions to be posted on a plate. Since subsection (a) will require that operating instructions be maintained in a weather resistant storage location on the device, the requirement here for basic restrictions will permit manufacturers to include a statement on the plate to direct the operator to the operator’s manual for complete instructions if they are too extensive to all be placed on the information plate. The effect of this modification will be to conform the standard with similar requirements in national consensus standards.

**Subsection (c)(6).**

Existing subsection (c)(6) requires plates or markings to contain operating instructions. It is proposed to clarify that these are to be basic operating instructions, as members of the advisory committee were concerned this could be interpreted to require complete operating instructions and that this would be burdensome and unnecessary as there likely would be insufficient room for all the operating instructions to be posted on a

plate. Since subsection (a) will require that operating instructions be maintained in a weather resistant storage location on the device, the requirement for basic operating instructions will permit manufacturers to direct users to those operating instructions. The effect of this modification will be to conform the standard with similar requirements in national consensus standards.

**Subsection (c)(7).**

Existing subsection (c)(7) requires plates or markings to identify the “manufacturer’s rated line voltage (dielectric capability).” It is proposed to clarify and conform this subsection with national consensus standards by modifying it to read: “Rated line voltage (if applicable).” The requirement for dielectric capability is not listed in most applicable national consensus standards for aerial devices and elevating work platforms and would only apply to a very limited number of devices. Furthermore, MCWP’s and other aerial devices are often powered by other than electricity, and this subsection is written to require rated line voltage information only if applicable. The effect of this modification will be to conform the standard with similar requirements in national consensus standards.

**Subsection (c)(8).**

The existing subsections prescribe information to be provided if the aerial device or elevating work platform is capable of being configured in more than one arrangement. Since MCWP’s are modular in nature, there are many possible combinations of powered units and outriggers. Therefore, it is not feasible to list all the possible configurations on the information plate. The advisory committee consensus was that an exception should be provided for MCWP’s to direct the user to the operating instructions for information needed to determine capacities, cautions and restrictions based on the various possible configurations. The effect of this modification will be to conform the standard with national consensus standards for MCWP’s.

**Subsection (d).**

The existing subsection provides that employees shall be instructed in the proper use of the platform, but does not provide any criteria for the instruction. It is proposed to modify this subsection to add that the instruction shall be in accordance with the manufacturer’s operating instructions and Section 3203 (Injury and Illness Prevention Program). The effect of this modification will be to provide criteria and clarify training requirements.

**Subsection (e).**

The existing subsection provides that all aerial devices and elevating work platforms shall be assembled and erected in accordance with Article 24 and shall be maintained in safe operating condition. It is proposed to modify this subsection to require that assembly and erection be done by a qualified person and in accordance with the manufacturer’s specifications. The effect of this modification will be to assure that the device is properly positioned, assembled, and braced by a qualified person, who is knowledgeable in the structural limitations of the device, in accordance with criteria established by the manufacturer.

**Subsection (e)(1).**

This new subsection is proposed to provide for situations where the device manufacturer is no longer in business and where assembly instructions are no longer available. In this situation, it is proposed to provide that assembly and erection may be conducted by a qualified person under the direction of a qualified engineer. The effect of this amendment will be to permit the continued use of existing elevating work platforms where the manufacturer is no longer in business and where the manufacturer’s instructions are no longer available, provided they are properly installed in accordance with good engineering practice.

**Subsection (f).**

The existing subsection refers to High Voltage Electrical Safety Orders (HVESO) Article 37 for work using aerial devices in proximity to energized high voltage power lines. The existing verbiage is unclear as to whether it is regulatory or advisory in nature. Therefore, it is proposed to clarify this subsection by using regulatory language (“shall be”) and to include elevating work platforms in the scope of this provision. A note is also proposed to cover work in proximity to energized low voltage power lines. The effect of these modifications will be to clarify that work performed when using elevating work platforms or aerial devices in proximity to energized power lines shall be in accordance with applicable parts of the Electrical Safety Orders.

**Section 3639. Factors of Safety in Design of Work Platform Assembly.**

**Subsection (a).**

The existing subsection provides that where a platform supports its work load by a system of wire ropes or lift chains, or both, the safety factor for the wire ropes and/or lift chains shall be not less than 6 to 1. A modification is proposed to increase the factor of safety to 8 to 1 for consistency with national consensus standards. The effect of this modification



will be to conform Title 8 with national consensus standards for aerial devices and elevating work platforms.

**Section 3640. Maintenance and Repairs.****Subsection (a).**

The existing subsection (a) provides that the materials used in the repair of aerial devices and elevating work platforms shall conform to standard specifications of strength, dimensions, and weights, and shall be selected to safely support the rated work load. It is proposed to renumber this subsection to (a)(3) and insert two new subsections (1) and (2) under a new subsection (a) which is proposed to be titled "Inspection, Maintenance and Repairs." The effect of titling subsection (a) is to clarify the location of requirements for inspection, maintenance and repairs of aerial devices and elevating work platforms.

**Subsection (a)(1).**

This new subsection provides that inspection, maintenance and repairs shall be performed by a qualified person in accordance with the manufacturer's specifications. The effect of this amendment will be to clarify qualifications and criteria for individuals performing inspection, maintenance and repairs.

**Subsection (a)(2).**

This new subsection prescribes criteria for inspection, maintenance and repair of aerial devices and elevating work platforms where the manufacturer has gone out of business and where the manufacturer's specifications are no longer available. The effect of this amendment will be to clarify requirements for inspection, maintenance and repair of equipment where the manufacturer has gone out of business and the manufacturer's specifications are no longer available.

**Subsection (a)(3).**

As noted above, this subsection contains the text of existing subsection (a) which is proposed to be relocated as part of a restructuring to clarify requirements for inspection, maintenance and repairs.

**Subsection (d).**

This new subsection prescribes record keeping requirements for inspections and repairs accomplished on aerial devices and elevating work platforms. The effect of this amendment will be to ensure that required inspections and repairs are accomplished in accordance with the manufacturer's specifications by requiring documentation and by requiring that the records be maintained for a period of at least three years.

**Subsections (d)(1) and (d)(2).**

These two new subsections require records of inspections and repairs to be maintained for at least three years and prescribe the content of the required records, including dates of inspection, deficiencies found, corrective actions recommended, repairs accomplished, and identification of the persons or entities performing the work. The effect of these amendments will be to improve worker safety by prescribing the contents of records to ensure that aerial devices and elevating work platforms are regularly inspected and repairs are performed as needed.

**Section 3642. Elevating Work Platform Equipment.****Subsection (a)(1).**

The existing subsection (a) requires elevating work platforms to be equipped with guardrails or other means of fall protection. Since MCWP's are commonly used for work on the outside building face they are often anchored or tied to the building, new subsections (a)(1) and (a)(2) are proposed to provide for fall protection issues unique to MCWP's. This new subsection (a)(1), for removal of the inboard guardrail on MCWP's used by glaziers, bricklayers and stonemasons, prescribes a maximum allowable gap between the inboard edge of the work platform and the building of 7 inches unless approved personal fall protection systems are used in accordance with Section 1670. This provision is based on a similar provision in the Construction Safety Orders [Section 1644(a)(7)] for metal scaffolds. The 7 inch limitation is necessary because workers employed in these trades often must place very heavy units on the building wall, and the advisory committee was of the consensus that a reach in excess of 7 inches presents hazards for workers having to lift the heavy units from the work platform to the building. The effect will be to provide equivalent safety for glaziers, bricklayers and stonemasons, who must remove the guardrail to facilitate placement of heavy building materials on the building exterior wall while working from a MCWP.

**Subsection (a)(2).**

The existing subsection (a) requires elevating work platforms to be equipped with guardrails or other means of fall protection. Since MCWP's are commonly used for work on the outside building face and are often anchored or tied to the building, a new subsection (a)(2) is proposed to provide for fall protection issues unique to MCWP's used by trades other than glaziers, bricklayers and stonemasons. This new subsection will permit the removal of the guardrail on the inboard edge of the work platform where the distance between the inboard edge and the building or structure wall is no more than 12 inches or when approved personal fall protection systems are



used in accordance with Section 1670. This provision is based on a similar provision in the Construction Safety Orders [Section 1644(a)(7)] for metal scaffolds. The 12-inch maximum dimension is based on the maximum allowable size for a floor hole. The effect of this amendment will be to provide equivalent fall protection for workers and to permit MCWP's to be used under specified conditions for work on the building face or structure wall without a guardrail interfering with the work.

**Subsection (d).**

The existing subsection provides that powered elevating work platforms shall have both upper and lower control devices. An exception is proposed for MCWP's that they shall only have one control device and that it shall be located on the platform. This exception was added for consistency with the ANSI/SIA consensus standard A92.9-1993, section 4.10.1, which specifies a single control location for MCWP's. The effect of this exception will be to conform control requirements for MCWP's with the national consensus standard and industry practice.

**Subsection (g).**

This new subsection prescribes fire safety provisions for MCWP's to include a fire extinguisher and to limit the fuel supply when fuel-powered equipment is being used. Many MCWP's are fuel-powered, and work with cutting torches is often performed from MCWP's, creating a fire safety hazard to employees who may have no ready means of escape should the platform become involved. The effect of this subsection will be to provide employee safety by providing a means to fight fires in-place since employees working on MCWP's may not have ready access to a means of escape.

**Section 3646. Operating Instructions (Elevating Work Platforms).**

**Subsection (k).**

A new subsection is proposed to specifically prohibit the use of elevating work platforms and MCWP's as construction personnel hoists or material hoists. These devices are designed to position personnel, along with necessary tools and materials, to perform their work. These devices are not designed for continuous/repetitive service as vertical transportation for personnel and material. Furthermore, these devices are not equipped with doors for use at elevator landings, and accidents have occurred when cantilevered lifts such as MCWP's have been loaded eccentrically with excessive amounts of material. Accidents have also occurred when transferring material across the gap between these devices and the

building. The effect of this amendment will be to assure that these devices are safely operated in a manner consistent with the design intent.

**Exception 1 for Subsection (k).**

An exception is proposed for the theatrical and television motion picture industry. This industry frequently works with temporary sets and, in some cases, MCWP's and/or elevating work platforms are the only feasible way to transfer personnel, cameras, and lighting for short duration shoots. The usage is typically from the ground to one level and is consistent with the device design parameters. This exception is similar to the existing exception provided for the motion picture industry in subsection 3646(a). The effect of this exception will be to permit the use of elevating work platforms for specialized work in the theatrical and television motion picture industry.

**Exception 2 for Subsection (k).**

This exception is proposed to clarify that this subsection is not intended to prohibit the transfer of tools, materials and/or workers using personal fall protection at the level where the work is being performed. This exception was added at the request of the advisory committee as they were concerned that subsection (k) could be misinterpreted to prohibit the movement of tools, materials and workers back and forth between the work platform and the building, incidental to work being performed at the interface. The effect of this exception is to clarify the intent of subsection (k).

**COST ESTIMATES OF PROPOSED ACTION**

**Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

**Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

**Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

**Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.

**DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

**EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

**ASSESSMENT**

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the

State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

**REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than June 10, 2005. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on June 16, 2005, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@hq.dir.ca.gov](mailto:oshsb@hq.dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes

may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

## TITLE 13. CALIFORNIA HIGHWAY PATROL

### NOTICE OF PROPOSED REGULATORY ACTION

#### TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, ADOPT NEW CHAPTER 12, ARTICLE 1, AND SECTION 1875

#### Computer Crime Reporting for State Agencies (CHP-R-05-03)

The California Highway Patrol (CHP) proposes a new regulation in Title 13, California Code of Regulations, related to requirements for computer crime reporting for state agencies.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 14615(b) of the California Government Code (GC) states in part, "*The Department of the California Highway Patrol has jurisdiction over those matters related to the security of state officers, property, and occupants of state property.*"

In addition, Section 14613.7(a) GC states in part, "*Each state agency that is protected by the Department of the California Highway Patrol, those state agencies currently being protected by contract private security companies, or those state agencies currently under contract with a local governmental law enforcement agency for general law enforcement services, excluding all current mutual aid agreements, shall, as soon as practical, report to the Department of the California Highway Patrol all crimes and criminally caused property damage on state-owned or state-leased property where state employees are discharging their duties.*"

The CHP proposes a new regulation requiring representatives of state agencies to immediately notify the CHP via the California State Warning Center upon discovery of all computer related crimes, as required by 14613.7(a) GC.

The California State Warning Center is available 24 hours a day, seven days a week, to receive reports of computer crimes from state agencies.

### PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 657-8196 or by writing to:

CHP, Information Management Division  
ATTN: Officer Jerry Jacobs  
2555 First Avenue  
Sacramento, CA 95818

Written comments will be accepted until 5:00 P.M., June 13, 2005.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Information Management Division, no later than 15 days prior to the close of the written comment period.

### AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 657-8196 or by calling the CHP, Information Management Division at (916) 657-7171. Facsimile requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection at the California Highway Patrol, Information Management Division, 2555 First Avenue, Sacramento. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our web site at [www.chp.ca.gov/regulations](http://www.chp.ca.gov/regulations).

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our web site.

### CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations should be directed to Paul Congi or Jerry Jacobs, CHP, Information Management Division at (916) 657-7171. Inquiries regarding the substance of the proposed regulations should be directed to Jerry Jacobs.

### ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the



resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

#### **FISCAL AND ECONOMIC IMPACT**

The CHP has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary or reimbursable costs or savings to any local agency, school district, or state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

#### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The California Highway Patrol is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **EFFECT ON SMALL BUSINESSES**

The California Highway Patrol has determined that the proposed regulatory action will have no affect on small businesses, since the proposed action is only applicable to state agencies.

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the California Highway Patrol must determine that no reasonable alternative considered by the California Highway Patrol, or that has otherwise been identified and brought to the attention of the California Highway Patrol, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The California Highway Patrol invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

#### **AUTHORITY**

This regulatory action is being taken pursuant to Sections 14613.7(a) GC and 2402 of the Vehicle Code (VC).

#### **REFERENCE**

This action implements, interprets, or makes specific Sections 14613.7(a) GC.

### **TITLE 13. CALIFORNIA HIGHWAY PATROL**

#### **NOTICE OF PROPOSED REGULATORY ACTION**

#### **TITLE 13, CALIFORNIA CODE OF REGULATIONS DIVISION 2, CHAPTER 4, AMEND ARTICLE 3, SECTION 970**

#### **Special Equipment—Insigne for Licensed Physicians CHP-R-04-05**

The California Highway Patrol proposes to amend regulations in Title 13, California Code of Regulations (13 CCR), related to insigne for licensed physicians.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Section 21058 of the California Vehicle Code (VC) authorizes the California Highway Patrol to approve an official insignia for use by physicians traveling in response to an emergency. Section 21058 VC provides a physician with relief from the prima facie speed limits when displaying an insignia approved by the California Highway Patrol, however, this provision does not relieve a physician from their duty to drive with due regard for public safety.

13 CCR, Section 970 was initially adopted in response to Section 21058 VC and the necessity for the California Highway Patrol to adopt regulation approving an official insignia. Apparently, based on discussions with the California Medical Association, the American Medical Association has yet to provide an official insignia to be used for this purpose. While the initial adoption of 13 CCR Sections 970 and 971 was made in a good faith effort by the California Highway Patrol to comply with the intent of the enabling statute, it has become overwhelmingly apparent the regulation will need to be revised in order to provide the medical industry with an approved insignia.

#### **PUBLIC COMMENTS**

Any interested person may submit written comments on this proposed action via facsimile at (916) 446-4579, by email to [cvsregs@chp.ca.gov](mailto:cvsregs@chp.ca.gov), or by writing to:

CHP, Enforcement Services Division  
Commercial Vehicle Section  
ATTN: Mr. Gary Ritz  
P. O. Box 942898  
Sacramento, CA 94298-0001



Written comments will be accepted until 5:00 PM, June 13, 2005.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the California Highway Patrol, Commercial Vehicle Section, no later than 15 days prior to the close of the written comment period.

#### **AVAILABILITY OF INFORMATION**

The California Highway Patrol has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the California Highway Patrol at the above address, by facsimile at (916) 446-4579 or by calling the California Highway Patrol, Commercial Vehicle Section at (916) 445-1865. Facsimile requests for information should include the following: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection at the California Highway Patrol, Commercial Vehicle Section, 444 North Third Street, Suite 310, Sacramento, CA 95814. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our web site at [www.chp.ca.gov/regulations](http://www.chp.ca.gov/regulations).

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our web site.

#### **CONTACT PERSON**

Any inquiries concerning the written materials pertaining to the proposed regulations should be directed to Mr. Gary Ritz or Mr. Greg Bragg, California Highway Patrol, Commercial Vehicle Section at (916) 445-1865. Inquiries regarding the substance of the proposed regulations should also be directed to Mr. Ritz.

#### **ADOPTION OF PROPOSED REGULATIONS**

After consideration of public comments, the California Highway Patrol may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

#### **FISCAL AND ECONOMIC IMPACT**

The California Highway Patrol has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary or reimbursable costs or savings to any local agency, school district, or state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

#### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The California Highway Patrol is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **EFFECT ON SMALL BUSINESSES**

The California Highway Patrol has determined that the proposed regulatory action may affect small businesses.

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the California Highway Patrol must determine that no reasonable alternative considered by the California Highway Patrol, or that has otherwise been identified and brought to the attention of the California Highway Patrol, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The California Highway Patrol invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

#### **AUTHORITY**

This regulatory action is being taken pursuant to Section 21058 VC.

#### **REFERENCE**

This action implements, interprets, or makes specific Section 21058 VC.

## TITLE 22. DEPARTMENT OF HEALTH SERVICES

### ACTION

Notice of Proposed Rulemaking  
Title 22, California Code of Regulations

### SUBJECT

Radionuclide Drinking Water Standards, **R-12-02**

### PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the Office of Regulations, Department of Health Services, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, by 5 p.m. on June 13, 2005, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Comments by FAX (916-440-7714) or email (regulation@dhs.ca.gov) must be received before 5 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

### CONTACTS

**In any of the following inquiries, please identify the action by using the Department regulation control number, R-12-02:**

1. In order to request a copy of this regulation package be sent to you, please call (916) 440-7695 or email regulation@dhs.ca.gov.
2. Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Alexis M. Milea, P.E., Chief of the Standards and Technology Unit, Drinking Water Program, at (510) 540-2177.
3. All other inquiries concerning the action described in this notice may be directed to Don Lee, Office of Regulations at (916) 440-7673, or to the designated backup contact person, Linda Tutor, at (916) 440-7697.

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for

accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Water Act (Sections 116270–116751, Health and Safety Code [H&S Code]). California has been granted "primacy" for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances to determine compliance with drinking water standards, including maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. Secondary MCLs are based on consumer acceptance, using parameters such as odor, taste, and appearance as measures of acceptability. The water supplier must notify the Department and the public when a primary or secondary MCL has been violated and take appropriate action. The proposed regulations for radionuclide drinking water standards include primary MCLs and associated monitoring requirements.

On December 7, 2000, EPA promulgated revisions to the existing federal requirements for radionuclides in drinking water [Federal Register 65(236), December 7, 2000, pp 76708–76753]. The revisions include the adoption of a primary MCL for uranium (California's uranium MCL was adopted in January 1989), a requirement for monitoring radium 228 and minor revisions related to compliance determinations and monitoring frequencies. Since California must adopt federal regulations to maintain primacy for the Drinking Water Program, the proposed regulation package incorporates all the federal revisions, except that California is retaining its 20 pCi/L uranium MCL instead of adopting the federal MCL of 30 ug/L. Also, for consistency with the Department's implementation of other drinking water standards and the fact that many nontransient-noncommunity water systems (schools serving young people) already voluntarily monitor for compliance with radionuclide MCLs, the proposed regulation applies to this category of systems.

Specifically, the Department proposes to:

- Amend Section 64415 to include the federal analytical method citation, and to provide for the necessary use of Department-approved methods for analytes regulated by the Department, but not covered by EPA-approved analytical methods.
- Repeal the existing Sections 64441 and 64443 and adopt new Sections 64442 and 64443 containing requirements supported by references to the federal radionuclide rule (40 CFR Parts 141 and 142).
- Adopt new Section 64447.3 to incorporate the federal Best Available Technologies (BAT) for radionuclides.

The net effect of the proposed amendments to the radionuclide requirements would be that:

- Both community and nontransient-noncommunity water systems would be required to monitor for and comply with radionuclide MCLs;
- Community water systems would be required to monitor for radium-228;
- Ongoing monitoring frequencies would be reduced for alpha particle activity, radium and uranium, as a function of levels detected;
- Monitoring for beta/photon emitters, strontium 90 and tritium would be required only for systems designated by the Department as vulnerable or identified as contaminated, whereas currently, all surface water systems of a certain size are required to monitor; and
- For systems monitoring quarterly for beta/photon emitters, compliance would be determined on the basis of a running quarterly average.

Adoption of these requirements would satisfy the mandate in Section 116350, H&S Code, and federal primacy requirements related to the adoption of regulations at least as stringent as the federal.

There are a few differences from the federal requirements in the proposed regulations:

- The Department is not required under primacy to adopt the federal MCLs [40 CFR 141.55]; therefore, it has not done so. Further, California has a comparable level, the public health goal.
- EPA adopted reporting levels for radium and alpha particle activity; however, the Department proposes to adopt reporting levels (Detection Levels for the Purposes of Reporting, DLRs) for the other radionuclides as well to insure standardized reporting and adequate data precision and accuracy. [Reference EPA section 141.25(c) and proposed California Code of Regulations [CCR] sections 64442 (a) and 64443(a)]. To insure that laboratories can indeed meet accuracy requirements at the DLR levels, Section 64442(i)(6) is proposed to require a water

system to check its laboratory's performance of the radionuclide analytical methods. The reference for this requirement is the following: ANSI N42.23, Measurement and Associated Instrumentation Quality Assurance for Radiobioassay Laboratories, Appendix A.7.6.

- EPA adopted an MCL of 30 ug/L for uranium [40 CFR 141.66(e)]; the Department is retaining its 20 pCi/L uranium MCL adopted in 1989 instead of adopting the less stringent federal MCL, because its policy is to not loosen standards unless there is a change in the risk assessment justifying such a change.
- EPA requires only community water systems to comply with radionuclide MCLs and monitoring requirements; the Department proposes to require nontransient-noncommunity water (NTNC) systems to comply as well for consistency with other California primary MCL regulatory requirements. Many nontransient-noncommunity water systems that are schools already voluntarily monitor for radionuclides to ensure that young people are not subject to this risk in their school settings. There would be one exception to the federal requirements, i.e., NTNC systems would not be required to monitor for radium 228 separately. The reason for the exception is that this monitoring is an effort by EPA to collect occurrence data on radium 228 to help them in making a decision regarding its regulation. The data would not add to public health protection at this time and would be unduly burdensome for NTNC systems.
- EPA allows distribution system monitoring data for radionuclides to be grandfathered to satisfy initial monitoring requirements [40 CFR 141.26(a)(2)(ii)(C)]. California water systems are highly unlikely to have such data, since radionuclide monitoring in the past has been conducted at the sources, as required by existing regulations; therefore, no such provision is necessary and is not proposed in this package.
- EPA provides for entering into "another schedule" with the state for compliance monitoring [40 CFR 141.26(a)(2)(iv), (3)(v)]; the Department did not include this provision, since it does not intend to enter into alternative compliance monitoring schedules due to the difficulties encountered in compliance tracking.
- EPA specifies that systems required to monitor by the Department for beta particle and photon radioactivity cannot apply for monitoring frequency waivers [40 CFR 141.26(b)(3)]; the Department did not include this specification since the proposed



regulations do not have a provision for waivers and, therefore, the Department does not anticipate that a system would apply for a non-existing waiver.

- EPA allows the Department to require more frequent monitoring or confirmation samples [40 CFR 141.26(c)(1)]. Since this is a permissive provision involving the Department, while the regulations are mandatory requirements for water systems, it is not appropriate to include this in the regulations.
- EPA specifies that if one sampling point is in violation of an MCL, the system is in violation of the MCL [40 CFR 141.26(c)(3)]. The Department did not include this statement in the proposed regulations because it believes that this is implicit in the regulations.

#### AUTHORITY

Sections 100275, 106875, 116375 and 116390, Health and Safety Code.

#### REFERENCE

Sections 116275, and 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.

#### FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: This regulation will result in an estimated incremental cost of \$1,251,800 during the 13-year period after it becomes effective, with an average cost of \$96,300.
- B. Fiscal Effect on State Government: This regulation will result in an estimated incremental cost of \$69,000 during the 13-year period after it becomes effective, with an average annual cost of \$5,300.
- C. Fiscal Effect on Federal Funding of State Programs: This regulation will result in an estimated net increment cost of \$89,700 during the 13-year period after it becomes effective, with an annual cost of \$6,900.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: This regulation will result in an estimated incremental cost of \$1,210,700 during the 13-year period after it becomes effective with an average annual cost of \$93,100.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

#### DETERMINATIONS

The proposed regulation would not impose a mandate on local agencies or school districts that requires state reimbursement. Local agencies should

not incur costs as a result of this regulation. However, if they were to incur costs, those costs would be of the following nature:

First, some local agencies would incur costs in their operation of public water systems. These costs would not be the result of a "new program or higher level of service" within the meaning of Article XIII B, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments. Therefore, no state reimbursement of these costs would be required.

Second, some local agencies could incur additional costs in discharging their responsibility to enforce the new regulations for the small public water systems (under 200 service connections) that they regulate. However, the Department has determined that any increase in the local agency costs resulting from enforcing this regulation would be insignificant. Furthermore, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems, Health and Safety Code Section 101325. Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required, Government Code Section 17556(d).

The Department has made an initial determination that the proposed regulations would not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations will be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, Section



11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

**AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF REGULATIONS**

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. A copy of the initial statement of reasons and a copy of the text of the proposed regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the proposed regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

**AVAILABILITY OF CHANGED  
OR MODIFIED TEXT**

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

**ADDITIONAL STATEMENTS AND COMMENTS**

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write:

Don Lee, Office of Regulations, MS 0015,  
P.O. Box 997413, Sacramento, CA 95899-7413,  
voice (916) 440-7673 and/or California Relay  
711/1-800-735-2929. Note: The range of assistive  
services available may be limited if requests are  
received less than ten working days prior to a public  
hearing.

**TITLE 28. DEPARTMENT OF  
MANAGED HEALTH CARE**

**ACTION**

Notice of Proposed Rulemaking  
Title 28, California Code of Regulations

**SUBJECT**

Data Collection, Disclosure Language, Grading/  
Reviewing and Corrective Action for Risk-Bearing  
Organizations. Amending sections 1300.75.4 and  
1300.75.4.5 and adopting sections 1300.75.4.2,  
1300.75.4.4, 1300.75.4.7 and 1300.75.4.8 of Title 28,  
California Code of Regulations (CCR).

**PUBLIC PROCEEDINGS**

Notice is hereby given that the Director of the Department of Managed Health Care (Director) proposes to amend and/or adopt regulations under the Health Care Service Plan Act of 1975 (Knox-Keene Act) relating to data collection and disclosure language, grading/reviewing and corrective action for risk-bearing organizations as referred to in section 1375.4 of the Health and Safety Code by amending sections 1300.75.4 and 1300.75.4.5 and adopting sections 1300.75.4.2, 1300.75.4.4, 1300.75.4.7 and 1300.75.4.8 in Title 28 CCR. Before undertaking the action, the Director will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice.

**PUBLIC HEARING**

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Managed Health Care's (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative may submit written statements, arguments or contentions (hereafter referred to as comments) relevant to the proposed regulatory action by the Department. The Office of Legal Services,

Department of Managed Health Care, must receive comments by 5 p.m. on June 13, 2005, which is hereby designated as the close of the written comment period. Comments may be transmitted by regular mail, FAX or email:

Email: [regulations@dmhc.ca.gov](mailto:regulations@dmhc.ca.gov)

Mail Delivery: Department of Managed Health Care  
Office of Legal Services  
980 9th Street, Suite 500  
Sacramento CA 95814

Fax: (916) 322-3968

Please note, if comments are sent via email or fax, there is no need to send the same comments by mail delivery. All comments, including email, fax transmissions or mail delivery should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited. Please address all comments to Regulations, Department of Managed Health Care, Office of Legal Services.

1. Inquiries regarding the substance of the proposed regulation described in this notice may be directed to Kevin Donohue, Counsel, Office of the Director, at (916) 445-9753.
2. All other inquiries concerning the action described in this notice may be directed to Elaine Paniewski, AGPA, at (916) 322-6727.

### CONTACTS

In any of the following inquiries, please identify the action by using the Department's regulation control number and title: **2004-0100, Data Collection, Disclosure Language, Grading/Reviewing and Corrective Action for Risk-Bearing Organizations.**

### AVAILABILITY OF DOCUMENTS

Materials regarding the proposed regulations (including this public notice, the proposed regulations, and the Initial Statement of Reasons) are available via the internet. The documents may be accessed at <http://www.hmohelp.ca.gov/library/regulations/> under Proposed Regulations. As required by the Administrative Procedure Act, the Department's Office of Legal Services maintains the rulemaking file. At the present time, the rulemaking file consists of the text of the regulations, the initial statement of reasons, and the notice of proposed rulemaking. The rulemaking file is available for public inspection by appointment at the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Suite 500, Sacramento, CA 95814.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the Knox-Keene Act, health care service plans must have the administrative and financial capacity to meet their contractual obligations for provision of health care services. During the twenty-five year period since the Knox-Keene Act was enacted, the financial risk of providing health care services has largely shifted from the plans to physician organizations such as medical groups, independent practice associations, and medical foundations. These physician organizations (referred to as risk-bearing organizations) contract with the plans, and often assume most of the financial risk once borne by the plans. The Knox-Keene Act includes standards and requirements to ensure that the plans have the administrative and financial capacity to meet their contractual obligations. However, the Knox-Keene Act did not, until recently, specify the types of standards and requirements necessary to ensure that a risk-bearing organization ("organization") has the administrative and financial capacity to meet its contractual obligations for provision of health care services.

Senate Bill 260 (Chapter 529, Stats. 1999) added Health and Safety Code Section ("Section")<sup>1</sup> 1375.4 to impose minimum financial solvency requirements on the organizations. Section 1375.4(a) requires every contract between a plan and an organization that is issued, amended, renewed, or delivered in the state on or after July 1, 2000, to include a requirement that the organization furnish financial information to the plan or the plan's designated agent, and meet other financial requirements, as specified. Section 1375.4(a) requires that the plan disclose information to the organization that enables the organization to be informed about the financial risk assumed under the contract.

To make specific these contracting requirements, Section 1375.4(b) requires the Director to adopt regulations to provide for the following:

- (1) A process for reviewing or grading organizations based on four specified criteria relating to timely claims resolution, appropriate accounting for "incurred but not reported" (IBNR) claims, positive tangible net equity (TNE), and positive working capital;
- (2) Submission by the organizations of information to assist in reviewing or grading these organizations, to include balance sheets, claims reports, and financial statements, etc;

<sup>1</sup> Unless otherwise specified, all references to "Section" are to sections of the California Health and Safety Code.

- (3) Audits to be conducted in accordance with generally accepted auditing standards, and in a manner that avoids duplication of review of the organizations;
- (4) A process for corrective action plans involving plans and organizations, as specified;
- (5) The disclosure of information by plans to organizations, including enrollee information on a monthly basis, and risk arrangement information on a quarterly basis;
- (6) Periodic reports from plans to the Director including information concerning the organizations and the type, and amount of financial risk assumed by them; and
- (7) The confidentiality of financial and other records to be produced, disclosed, or otherwise made available, unless determined otherwise by the Director.

On March 22, 2001, the Department filed, as emergency regulations, sections 1300.75.4, 1300.75.4.1, 1300.75.4.2, 1300.75.4.3, 1300.75.4.4, 1300.75.4.5 and 1300.75.6. The certificate of compliance for the emergency regulations was transmitted to the Office of Administrative Law on July 20, 2001 and filed August 31, 2001. After the emergency regulations became permanent, the California Medical Association successfully challenged regulation sections 1300.75.4.2 and 1300.75.4.4 in Sacramento County Superior Court under caption *California Medical Association v. Daniel Zingale, Director Department of Managed Health Care, et al*, Case No. 01CS01265. On February 28, 2002, the trial court determined that the promulgation of the regulation sections 1300.75.4.2 and 1300.75.4.4 was arbitrary and capricious because there appeared to be no evidence in the rulemaking record that the Department's collection and disclosure of risk-bearing organization financial information would not "adversely affect the integrity of the contract negotiation process between health care service plans and risk-bearing organizations." The final order memorializing the court ruling was entered May 16, 2002.

On May 23, 2002, the Department filed a non-substantive repeal of regulation sections 1300.75.4.2 and 1300.75.4.4, pursuant to section 100 of Title 1, CCR, to formally repeal the stricken regulations. The Office of Administrative Law approved the repeal of these regulation sections 1300.75.4.2 and 1300.75.4.4 on July 8, 2002, and the repeal became effective August 7, 2002.

This regulatory action proposes to amend regulations section 1300.75.4 and 1300.75.4.5 and adopt "revised" regulation sections 1300.75.4.2, 1300.75.4.4, 1300.75.4.7 and 1300.75.4.8 of Title 28 of the CCR, to conform to the trial court's ruling, and to

clarify and make specific the statutory requirements 1, 2, 3, 4 and 7, listed above. Items 5 and 6 were addressed in the regulation sections 1300.75.4, 1300.75.4.1, 1300.75.4.3, 1300.75.4.5, and 1300.75.4.6 which have not been challenged.

#### AUTHORITY

Health and Safety Code sections 1344 and 1375.4

#### REFERENCE

Health and Safety Code sections 1375.4

#### AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the Regulations. A request for a copy of any modified regulation(s) should be addressed to Elaine Paniewski. The Director will accept written, faxed or e-mailed comments on the modified regulation(s) for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Elaine Paniewski, Staff Service Analyst, at (916) 322-6727 or [regulations@dmhc.ca.gov](mailto:regulations@dmhc.ca.gov) or available on the internet at <http://www.hmohelp.ca.gov/library/regulations/> under the heading Proposed Regulations.

#### ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified or brought to its attention would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period.

#### FISCAL IMPACT STATEMENT

- Mandate on local agencies and school districts: None
- Cost or Savings to any State Agency: None
- Direct or Indirect Costs or Savings in Federal Funding to the State: None



- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None
- Costs to private persons or businesses directly affected: The DMHC has initially determined the proposed regulations could result in unknown, modest costs to risk-bearing physician organizations. These costs are related to modifications of financial and other data reporting systems, as well as the preparation of audited or reviewed financial statements by risk-bearing physician organizations.
- Effect on Housing Costs: None
- Other non-discretionary cost or savings imposed upon local agencies: None

#### DETERMINATIONS

The Department has made an initial determination the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Since the regulations apply to all risk-bearing physician organizations doing business in this State, they should not result in any competitive disadvantage to any particular physician organization. Physician organizations are not generally in competition with similar organizations in other states.

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations will have no impact on housing costs.

The Department has determined that the regulations affect small businesses since some of the entities required to comply with the regulations are small businesses. The express terms of the proposed action written in plain English are available from Elaine Paniewski. Copies may also be obtained from the Department's Sacramento office upon request. Health care service plans are not considered a small business under Government Code section 11342(h)(2).

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs within the State of California.

The Department has determined that the regulations will not significantly affect the creation of new businesses or the elimination of existing businesses within the State of California.

The Department has determined that the regulations will not significantly affect the expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses currently doing business within the State of California.

#### FINDING REGARDING REPORTING REQUIREMENT

Government Code section 11346.3(c) provides as follows:

"No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses."

All reporting requirements included in these regulations do apply to businesses because the Department has determined that the regulations are necessary to maintain the health, safety and welfare of the people of the State of California.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. Initial Statement of Reasons
2. Text of proposed regulations
3. All information upon which the proposal is based (rulemaking file)

This information is available by request at the Department of Managed Health Care, Office of Legal Services, 980 9th St., Sacramento, CA 95814, or on our website at <http://www.hmohelp.ca.gov/library/regulations/>, under Proposed Regulations.

### GENERAL PUBLIC INTEREST

#### DEPARTMENT OF FISH AND GAME

##### PROPOSED RESEARCH ON FULLY PROTECTED SPECIES

##### Conducting Disease Investigations on the Ringtail ("Ring-tailed cat") (*Bassariscus astutus*)

The Department of Fish and Game ("Department") received a proposal in 2004, from Mr. Mourad W. Gabriel and Ms. Greta M. Wengert, requesting authorization to take the ringtail ("Ring-tailed cat") (*Bassariscus astutus*), a Fully Protected Mammal, for



research purposes, consistent with the protection and recovery of the species. Both researchers have experience in trapping and handling ringtails from past work and training. The researchers operate the Integral Ecology Research Center out of Bayside, California.

Both researchers have applied for a required Scientific Collecting Permit (SCP) to take ringtails in order to study their diseases, and diseases of other carnivores. Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species. The proposed activities include the following, to be conducted from 2005–2008: 1) Capture ringtails via baited tomahawk cage traps equipped with a wooden cubby box at the rear to provide protection and cover for the animal; 2) Short-term tranquilization by direct intramuscular injection; 3) Brief physical exam including measurement of standard body dimensions and evaluation of dentition to determine age-class; 4) Attachment of ear tags with individual color-marked identification; 5) Fecal scoops for endoparasite analysis; 6) Collection of ectoparasites; and 7) Collection of a blood sample from the femoral vein. After processing and recovery, the ringtails will be released unharmed at the live capture site. They may also be recaptured in order to gather additional data for seasonal influence of diseases. Animals recaptured will be released unharmed at the capture site after processing and recovery.

The research will occur in Del Norte, Humboldt, and Trinity counties of California, and will continue through 2008.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) or letter permit that would authorize the applicants, as Principal Investigators, to carry out the proposed activities. This MOU/permit would be similar to previous MOUs entered into between other ringtail researchers and the Department.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected Mammals after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected Mammals, it would issue the authorization on or after May 29, 2005, for a term of three years. Contact: Department of Fish and Game, Habitat Conservation Planning Branch, Suite 1260, 1416 Ninth Street, Sacramento, CA 95814, Attn: Dale Steele.

## DEPARTMENT OF HEALTH SERVICES

Notice is hereby given that the Drug Use Review (DUR) Board will conduct a meeting between 10:00 and Noon on May 10, 2005, at the following location:

Department of Health Services  
1501 Capitol Avenue, Room 71.4003  
Sacramento, CA 95814

### AGENDA

1. Call Meeting to Order and Roll Call.
2. Review and Approval of February 8, 2005 Meeting Minutes. (*Action Item*)
3. DUR Board Bylaw changes—
  - Defining what does not constitute a “Quorum”. (*Action Item*)
  - Expanding rotation off the Board language to include “the availability of approved Board members for the replacement.” (*Action Item*)
4. Nomination and Selection of Vice Chair. (*Action Item*)
5. Department of Health Services Announcements and Updates
6. Test Alert report for aripiprazole, olanzapine/fluoxetine, ziprasidone hcl and ziprasidone mesylate. (*Action Item*)
7. Status and Update of DUR Activities
  - Utilization Measures
8. DUR 2004 Annual Report (*Action Item*)
9. Public and DUR Board Comments\*
10. Closing

The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five (5) working days before the meeting by contacting Jude Simon-Leack at (916) 636-1000 or sending a written request to the address below. Requests for further information should also be directed to Jude Simon-Leack.

Electronic Data Systems  
3215 Prospect Park Drive  
Rancho Cordova, CA 95670  
Attention: Jude Simon-Leack,  
DUR Pharmacist Consultant

Picture identification is required to gain access into the Department of Health Services building. However, your security information will not be provided to the DUR Board.

\* Comments from the public are always appreciated. However, comments will be limited to five minutes per individual.

You can obtain the DUR Board agenda at the following website: [Medi-Cal.ca.gov](http://Medi-Cal.ca.gov). Once there, select 'Drug Use Review (DUR)' from the menu on the left side.

## **DECISION NOT TO PROCEED**

### **DEPARTMENT OF MANAGED HEALTH CARE**

#### **CALIFORNIA CODE OF REGULATIONS PROPOSED AMENDMENT OF TITLE 28, SECTION 1300.67.2 AND ADDITION OF SECTIONS 1300.67.2.2 AND 1300.67.2.3**

Notice is hereby given pursuant to Government Code section 11347 that the California Department of Managed Health Care (the "Department") has decided not to proceed with the adoption of the proposed amendment of Title 28, California Code of Regulations Section 1300.67.2 and addition of Title 28, California Code of Regulations Sections 1300.67.2.2 and 1300.67.2.3 regarding Access to Needed Health Care Services—Notice File Z04-0628-01—published in the California Regulatory Notice Register on July 9, 2004. At a later date, the Department will initiate, with the required notice, a new proposal to adopt and amend regulations pertaining to the same subject matter.

## **RULEMAKING PETITION DECISIONS**

### **DEPARTMENT OF CORRECTIONS**

#### **NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS**

#### **CALIFORNIA CODE OF REGULATIONS TITLE 15, CRIME PREVENTION AND CORRECTIONS DIVISION 3, DEPARTMENT OF CORRECTIONS**

##### **PETITIONER**

Brian Adams.

##### **AUTHORITY**

Under authority established in Penal Code (PC) Section 5058 the Director may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests with the Director the supervision, management, and control of the prisons, and the

responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

##### **CONTACT PERSON**

Please direct any inquiries regarding this action to Timothy Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001, or telephone (916) 358-1662.

##### **AVAILABILITY OF PETITION**

The petition for amendment of the regulations is available upon request directed to the Department's contact person.

##### **SUMMARY OF PETITION**

Petitioner requests the Department of Corrections to amend the California Code of Regulations (CCR), Title 15, Division 3, Section 3191. The Petitioner requests that the Department amend regulations regarding appliance volume control.

##### **DEPARTMENT DECISION**

The Director of Corrections denies the petition to amend regulations in Title 15, Division 3, Section 3191 of the CCR.

The Petitioner requests that the Department amend regulations to state that any appliance item found to be excessively loud in volume be deemed as mismanaged and shall be cause for disciplinary action pursuant to Section 3312(a). The Petitioner further contends that inmates are allowed to play appliances without any discipline, respect, or regard for others while maintaining a volume level so resounding that it produces a safety and security hazard.

Current CCR, Section 3190 clearly states that institutions shall permit inmates to possess in their living quarters personal property items that present no threat to institution security or the safety of persons.

The Department contends that pursuant to local operating procedures, headphone/earphone jacks are required on newly purchased televisions and radios at the Petitioner's institution. The Department further contends that each institution enforces acceptable volume levels within housing units pursuant to each institution's local operating procedures. Failure to comply with these local procedures can result in the loss of the television/radio as part of the adjudication of the disciplinary process.

Pursuant to CCR, Section 3084.1 any inmate may pursue a remedy through the CDC 602 Inmate Appeal process that they can demonstrate as having an adverse effect upon their welfare.

## DEPARTMENT OF CORRECTIONS

### NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

#### CALIFORNIA CODE OF REGULATIONS TITLE 15, CRIME PREVENTION AND CORRECTIONS

#### DIVISION 3, DEPARTMENT OF CORRECTIONS

#### PETITIONER

Tony Protopappas.

#### AUTHORITY

Under statutory authority cited in Sections 5054 and 5058 of the Penal Code, the Department Director has responsibility for the supervision, management, and control of the prisons and may prescribe and amend regulations for the administration of prisons. Section 11340.6 of the Administrative Procedure Act allows for “. . . any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation.” Petitions must conform to the strict requirements set forth in the Administrative Procedure Act pertaining to the standards for a petition.

#### CONTACT PERSON

Direct inquiries pertaining to this Notice of Decision on Petition to Amend Regulations to Timothy Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001, or telephone (916) 358-1655.

#### AVAILABILITY OF PETITION

The actual petition filed and the response thereto is available for review upon request submitted to the departmental contact.

#### SUMMARY OF PETITION

Petitioner requests the adoption, amendment, or repeal of Section 53060.10 of the Department Operations Manual (DOM) under provisions of the Administrative Procedure Act embodied in Sections 11340 through 11465 of the Government Code. Current DOM Section entitled Inmate Access to Law Library “conflicts and supersedes the mandates of Sections 3122(a) and 3160(a) of the California Code of Regulations, Title 15 because two hours of law library access per week does not provide for meaningful access to the courts,” in the opinion of the Petitioner.

Specifically, the Petitioner puts forth the following three potential remedies for resolution of this petition:

1. Enactment of a regulation specifically providing a minimum of 10 hours of law library access per week for prisoners with pending court deadlines.

2. To reply within 30 days of the date of this petition consistent with provisions of the Administrative Procedure Act.
3. Whatever relief the Chairman of the Board of Prison Terms determines to be fair, just, equitable, and legal.

#### DEPARTMENT DECISION

The Director of the Department of Corrections denies the above referenced petition to adopt, amend, or repeal Section 53060.10 of the DOM, Inmate Access to Law Library, because no apparent conflict exist between departmental policy and regulations governing inmate access to law libraries on a statewide basis. The petition requests the Director to amend the DOM through the regulatory rulemaking process. These administrative processes are separate. Changes to the DOM or local DOM supplements should be addressed to the Warden or designee, local law library staff, or other designated prison facility management staff to bring attention to specific time constraints, and existence of imminent court deadlines so that locally the situation can be assessed on a case-by-case basis for an adequate alternative or potential transfer, if warranted.

The Department contends that the appropriate procedures have been followed in the development and implementation of statewide policies, rules, and regulations governing the use of libraries, law libraries, and associated services with prisoners. The Department disagrees with the Petitioner’s claim that the DOM governing inmate law libraries was not enacted “with approval through the Administrative Procedure Act . . . and is an underground regulation.”

In fact, the statewide DOM Section at issue, 53060.10, does not specify a set number of hours of operation. Each facility head shall formulate an operational schedule for the inmate law library. This schedule shall include:

1. Daily hours of library operation.
2. Consideration to needs of inmates assigned to day work, training, or academic education.
3. Consideration to needs of inmates assigned to security, segregated, and other restricted housing units.
4. The maximum inmate access consistent with space limitations and facility security needs.

Under the administration and supervision of the Director is the local prison authority, designated as the Warden. Within the designated areas of responsibility for a Warden, Section 51020.1 of the DOM indicates “there may occasionally be a need at the facility/parole region level to clarify or supplement information in a section of the DOM. This need may arise



from insufficient detailed information upon which to provide for day-to-day operation or it may occur based on a need to clarify specifics of operations provided in the DOM.” Section 51020.2 of the DOM suggests this “is to provide a process by which facilities and parole regions shall clarify the DOM for local operating procedures.” As it relates to the submitted petition from Inmate Protopappas, the Warden at the institution where the inmate is confined designates staff to manage and maintain a library and law library under centralized library policies and procedures established by the Director of the Department of Corrections.

Under the jurisdiction of the Warden in a local prison environment, Section 3120(a) of the California Code of Regulations, Title 15 indicates, “each Warden shall ensure a library, law library, and related services are maintained for the benefit of inmates in their facility, including those inmates confined to segregated housing units. A library access schedule shall be approved by the Warden and posted throughout the facility.” Sections 3122(a) and (b) of the California Code of Regulations, Title 15 indicates, the Warden shall ensure “each facility shall provide legal materials through its law library to provide inmates with meaningful access to the courts. Inmates with established court deadlines shall be given higher priority to access law library resources than those with longer deadlines or without a deadline. An inmate in a facility without a law library and requesting access to such resources shall be transferred to a facility with a law library of departmental choosing for the period of time needed to complete legal work.” Section 3160 of the California Code of Regulations, Title 15 indicates, “inmate access to courts shall not be obstructed. Staff shall assist illiterate inmates or those physically incapable of preparing forms adopted under rules of the United States Courts and the Judicial Council of California for petitions for habeas corpus or modifications of custody if such an inmate requests assistance. Staff shall not in any way retaliate against or discipline any inmate for initiating or maintaining a lawsuit.”

The issues raised in the above mentioned petition submitted by Inmate Protopappas does not rise to the level of new rulemaking by the Director, a remedy requested by the Petitioner. However, if local prison procedures or local DOM supplements restrict access to the local prison law library to the point where the inmate believes his access to the courts is jeopardized, the Petitioner could:

1. Work with the inmate counsel and prison administration to expand the hours of operation.
2. File an appeal challenging local procedures.

The appropriate levels for initial intervention for the issues submitted are with local prison administrators.

## PROPOSITION 65

### CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

#### SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (Proposition 65)

#### CHEMICALS UNDER CONSIDERATION FOR POSSIBLE LISTING VIA THE AUTHORITATIVE BODIES MECHANISMS:

##### REQUEST FOR RELEVANT INFORMATION

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the Act) which is codified at Health and Safety Code section 25249.5 et seq., requires the Governor to publish, and update at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. The Act provides two primary mechanisms for administratively listing chemicals as known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8(b)).

One mechanism by which a chemical is listed is if a body considered to be authoritative by the state’s qualified experts has formally identified it as causing cancer or reproductive toxicity. For cancer, the U.S. Environmental Protection Agency (U.S. EPA), the International Agency for Research on Cancer (IARC), the National Toxicology Program (NTP), the U.S. Food and Drug Administration (FDA), and the National Institute for Occupational Safety and Health (NIOSH) have been identified as authoritative bodies for purposes of the Act. The criteria for listing chemicals through the “authoritative bodies” mechanism are set forth in Title 22, California Code of Regulations, Section 12306<sup>1</sup>.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is investigating the possible listing of the chemicals identified below, based upon information in the references cited. Documentation summarizing the rationale for considering the evaluation of these chemicals for possible administrative listing is available from OEHHA’s Proposition 65 Implementation Office at the address

<sup>1</sup> All further citations are to the California Code of Regulations unless otherwise indicated.



and telephone number indicated below, or from the Internet at the following address: <http://www.oehha.ca.gov/prop65.html>.

OEHHA is committed to public participation and external scientific peer review in its implementation of Proposition 65, and welcomes public input on this listing process. As part of its efforts to ensure that regulatory decisions are based upon a thorough consideration of all relevant information, OEHHA is soliciting information concerning whether the criteria set out in Section 12306 have been met for the chemicals identified below.

A public forum to present oral comments and to discuss the scientific data and other information concerning whether the chemicals identified below meet the criteria for listing set forth in Section 12306 will be scheduled only upon request. Such request must be submitted in writing no later than 30 days before the close of the comment period on **Tuesday, June 28, 2005**. The written request must be sent to OEHHA at the address listed below no later than **Tuesday, May 31, 2005**. A notice for the public forum, if one is requested, will be posted on the OEHHA web site at least ten days in advance of the forum date. The notice will provide the date, time, location and subject matter to be heard. Notices will also be sent to those individuals requesting such notification. Written comments provided in **triplicate**, along with supporting information, should be submitted to:

Ms. Cynthia Oshita  
Office of Environmental Health  
Hazard Assessment  
Street Address: 1001 I Street  
Sacramento, California 95814  
Mailing Address: P.O. Box 4010  
Sacramento, California 95812-4010  
Fax No.: (916) 323-8803  
Telephone: (916) 445-6900

**Comments may also be delivered in person or by courier to the above address. It is requested, but not required, that written comments and supporting documentation be transmitted via email addressed to: [coshita@oehha.ca.gov](mailto:coshita@oehha.ca.gov). In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered, sent by FAX, or transmitted electronically) by 5:00 p.m. on Tuesday, June 28, 2005.**

Following the review of all comments received, OEHHA will announce its intention to proceed with the listing of the candidate chemicals that meet the regulatory criteria for administrative listing in a *Notice of Intent to List Chemicals*.

A. Chemicals which may meet the criteria set forth in Section 12306 for listing as known to cause **cancer** via the "authoritative bodies" mechanism:

Chemical	CAS No.	Chemical Use	Reference
Iprovalicarb	140923-17-7; 140923-25-7	Fungicide used on imported grapes and raisins. Not registered by U.S. EPA.	U.S. EPA (2002)
Nitrapyrin	1929-82-4	Nitrogen stabilizer for ammonia and urea nitrogen fertilizers.	U.S. EPA (2000)
Propoxur	114-26-1	Used for the control of various insects such as earwigs, cockroaches, spiders, ants, silverfish and clover mites.	U.S. EPA (1996)

#### REFERENCES

U.S. Environmental Protection Agency (U.S. EPA, 1996). *Memorandum: Carcinogenicity Peer Review of (4th) Baygon (Propoxur)*. Office of Prevention, Pesticides and Toxic Substances. June 17, 1996.

U.S. Environmental Protection Agency (U.S. EPA, 2000). Cancer Assessment Document. Evaluation of the Carcinogenic Potential of Nitrapyrin (Second Review). Cancer Assessment Review Committee. Health Effects Division. Office of Pesticide Programs. May 5, 2000.

U.S. Environmental Protection Agency (U.S. EPA, 2002). Cancer Assessment Document. Evaluation of the Carcinogenic Potential of Iprovalicarb. Cancer Assessment Review Committee. Health Effects Division. Office of Pesticide Programs. April 11, 2002.

## DISAPPROVAL DECISIONS

### DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at [www.oal.ca.gov](http://www.oal.ca.gov). You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339; (916) 323-6225; FAX (916) 323-6826. Please request by OAL file number.

### STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW (Gov. Code Sec. 11349.3) OAL File No. 05-0301-02 S

### DECISION OF DISAPPROVAL OF REGULATORY ACTION

**In re:**  
**DENTAL BOARD OF CALIFORNIA**

**REGULATORY ACTION: Title 16, California Code of Regulations**

**AMEND SECTION: 1043.2**

**SUMMARY OF REGULATORY ACTION**

This regulatory action deals with the composition of onsite inspection and evaluation teams. The Dental Board of California ("Board") submitted this regulatory action to the Office of Administrative Law ("OAL") on March 1, 2005. On April 12, 2005, OAL notified the Board that OAL had disapproved the regulation because it failed to comply with the Clarity and Necessity standards contained in Government Code section 11349.1 and for incorrect procedure.

**CONCLUSION**

For the reasons described above, OAL disapproved this regulatory action because it did not comply with the clarity and necessity standards, and for incorrect procedure.

Please contact me at (916) 323-6809 if you have any questions.

April 19, 2005

BARBARA ECKARD

Senior Staff Counsel

For: WILLIAM L. GAUSEWITZ

Director

Original: Cynthia Gatlin, Executive Officer

cc: Richard De Cuir

<p><b>SUMMARY OF REGULATORY ACTIONS</b></p>
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**REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

**BOARD OF ACCOUNTANCY**

**Disclosure of Confidential Information Prohibited**

In this regulatory action, the Board of Accountancy amends its regulations pertaining to the prohibition on licensees disclosing confidential information concerning clients and prospective clients (subject to certain exceptions and specific requirements).

Title 16

California Code of Regulations

AMEND: 54.1, 54.2

Filed 04/14/05

Effective 05/14/05

Agency Contact: Aronna Wong (916) 263-3788

**COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

**Required Training for RBC Instructors**

This action adopts POST's minimum training standards for Regular Basic Course instructors.

Title 16

California Code of Regulations

AMEND: 1071, 1083

Filed 04/14/05

Effective 05/14/05

Agency Contact: Anna DelPorto (916) 227-4854

**DEPARTMENT OF CONSERVATION**

**Application Review, Processor Costs and Other Changes Without Regulatory Effect**

The amendments to these sections, dealing with recycling centers and other recycling related subjects, are changes without regulatory effect to reflect statutory changes and the repeal of two statutes.

Title 14

California Code of Regulations

AMEND: 2030, 2305, 2310, 2505, 2960

Filed 04/13/05

Effective 05/13/05

Agency Contact: Cheryl Brown (916) 323-0728

**DEPARTMENT OF FOOD AND AGRICULTURE**

**Peach and Nectarine Size Requirements**

This action amends the maximum number of peaches or nectarines permitted in various volume-filled nonconsumer containers to conform to industry packaging practices.

Title 3

California Code of Regulations

AMEND: 1446.9(c), 1454.16(c)

Filed 04/15/05

Effective 04/15/05

Agency Contact: Sonja A. Dame (916) 445-2180

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**Multifamily Housing Supportive Housing Loans**

This regulatory action establishes procedures and policies within the Multifamily Housing Program regarding loans for supportive housing projects.

Title 25

California Code of Regulations

ADOPT: 7340, 7341, 7342, 7343, 7344, 7345, 7346, 7347

Filed 04/14/05

Effective 05/14/05

Agency Contact: Lenora Frazier (916) 323-4475

DEPARTMENT OF INDUSTRIAL RELATIONS  
Request(s) for Approval of Volunteer Labor

This filing is a change without regulatory effect repealing section 16003 of title 8 of the California Code of Regulations which provided the procedure for filing requests for approval of volunteer labor under former section 1720.4 of the Labor Code.

Title 8  
California Code of Regulations  
REPEAL: 16003  
Filed 04/19/05  
Effective 05/19/05  
Agency Contact: Laura Z. Davis (415) 703-4260

EDUCATION AUDIT APPEALS PANEL  
Audits of K-12 Local Education Agencies—  
FY 2004–05

This action would clarify the procedure for audit of a school district's CalSafe program by stating more explicitly the Panel's intention that all CalSafe programs should be audited.

Title 5  
California Code of Regulations  
AMEND: 19836  
Filed 04/14/05  
Effective 04/14/05  
Agency Contact:  
Carolyn Pirillo (916) 445-7745

FISH AND GAME COMMISSION  
Scotts Valley Polygonum

This regulatory action adds Scotts Valley Polygonum to the list of California native plant species declared to be endangered as described in section 2062 of the Fish and Game Code

Title 14  
California Code of Regulations  
AMEND: 670.2  
Filed 04/19/05  
Effective 05/19/05  
Agency Contact: Sherrie Koell (916) 653-4899

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD  
CSO, Sec 1637; SBSRSBSO, Sec 8397, 9397.10

The California Occupational Safety and Health Standards Board is amending section 8354 and adopting sections 8397.10, 8397.11, 8397.12, and 8397.13, title 8, California Code of Regulations. These amendments and adoptions were made in order to comply with changes made in Vol. 69, Federal Register, pages 55668-55708, on September 15, 2004. These amendments are exempt from review by the Office of Administrative Law under Labor Code Section 142.3(a)(3).

Title 8  
California Code of Regulations  
AMEND: 8354, 8397.10, 8397.11, 8397.12, 8397.13.  
Filed 04/14/05  
Effective 04/14/05  
Agency Contact: Marley Hart (916) 274-5721

PHYSICAL THERAPY BOARD OF CALIFORNIA  
Approved Physical Therapy Education Programs

This action clarifies the eligibility for licensure of graduates of Board approved educational programs by explaining that eligibility is based upon the approved status of the educational program at the time of the applicant's graduation.

Title 16  
California Code of Regulations  
AMEND: 1398.30  
Filed 04/14/05  
Effective 05/14/05  
Agency Contact:  
Arlyce T. Broeck (916) 561-8252

STATE PERSONNEL BOARD  
Psychological Screening for Peace Officer  
Candidates

This regulatory action revises the provisions governing the psychological screening of peace officer candidates and is exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code.

Title 2  
California Code of Regulations  
AMEND: 172.4, 172.5, 172.6, 172.7, 172.8, 172.9, 172.10  
Filed 04/19/05  
Effective 04/19/05  
Agency Contact:  
Elizabeth Montoya (916) 654-0842

**CCR CHANGES FILED WITH THE  
SECRETARY OF STATE  
WITHIN DECEMBER 1, 2004  
TO APRIL 20, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

04/19/05 AMEND: 172.4, 172.5, 172.6, 172.7, 172.8, 172.9, 172.10  
 03/21/05 AMEND: 549.70, 549.71, 549.72, 549.74  
 03/02/05 AMEND: 1859.73.2, 1859.145.1  
 02/28/05 AMEND: 1859.2  
 02/28/05 AMEND: 1859.71.3, 1859.78.5  
 02/28/05 AMEND: 1859.2  
 02/24/05 AMEND: 211  
 02/23/05 ADOPT: 1859.90.1 AMEND: 1859.2  
 02/15/05 AMEND: 1859.81  
 02/03/05 ADOPT: 1859.78.8 AMEND: 1859.2, 1859.60, 1859.61, 1859.78.6  
 02/03/05 AMEND: 1859.106  
 01/31/05 AMEND: 1859.2, 1589.33, 1859.35, 1859.77.3, 1859.82, 1859.83  
 01/26/05 ADOPT: 20107  
 01/04/05 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943  
 01/03/05 ADOPT: Division 8, Chapter 108, Section 59530.  
 12/31/04 ADOPT: 18229  
 12/31/04 AMEND: 18545  
 12/20/04 ADOPT: 1859.71, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83  
 12/16/04 ADOPT: 1859.51.1, 1859.70.2 AMEND: 1859.2, 1859.51, 1859.70, 1859.103,  
 12/06/04 AMEND: 1859.2, 1859.51

**Title 3**

04/15/05 AMEND: 1446.9(c), 1454.16(c)  
 04/04/05 AMEND: 6400  
 03/07/05 ADOPT: 1392.8.1(3) AMEND: 1392.8.1.(2)  
 03/01/05 ADOPT: 796, 796.1, 796.2, 796.3, 796.4, 796.5, 796.6, 796.7, 796.8, 796.9  
 AMEND: Article 8 heading REPEAL: 795.10, 795.13, 795.14, 795.16, 795.17, 795.19, 795.30, 795.32, 795.33, 795.50  
 02/28/05 AMEND: 3430(b)  
 02/24/05 AMEND: 1280.2  
 02/23/05 AMEND: 3423(b)  
 02/15/05 ADOPT: 4603(g)  
 02/02/05 AMEND: 3430(b)  
 01/21/05 AMEND: 3700(b)(c)  
 01/21/05 ADOPT: 3700  
 01/14/05 AMEND: 3700(c)  
 01/13/05 AMEND: 3962(a)  
 12/20/04 REPEAL: 305, 306

**Title 4**

04/04/05 ADOPT: 10300, 10302, 10305, 10310, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10328, 10330, 10335, 10337  
 03/22/05 AMEND: 12250, 12270, 12271, 12272  
 02/28/05 AMEND: 2424

02/11/05 ADOPT: 7030, 7031, 7032, 7033, 7034, 7035, 7036, 7037, 7038, 7039, 7040, 7041, 7042, 7043, 7044, 7045, 7046, 7047, 7048, 7049, 7050  
 02/04/05 AMEND: 1371  
 01/28/05 ADOPT: 12270, 12271, 12272  
 12/23/04 ADOPT: 10163, 10164 AMEND: 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162  
 12/20/04 ADOPT: 12200, 12200.1, 12200.3, 12200.5, 12200.6, 12200.7, 12200.9, 12200.10A, 12200.10B, 12200.10C, 12200.11, 12200.13, 12200.14, 12200.15, 12200.16, 12200.17, 12200.18, 12200.20, 12200.21, 12201, 12202, 12203, 12203A, 12203.1, 12203.2, 12203.3, 12203.  
 12/16/04 ADOPT: 144  
 12/16/04 ADOPT: 10300, 10301, 10302, 10303, 10304, 10305, 10306, 10307, 10308, 10309, 10310, 10311, 10312, 10313, 10314, 10315, 10316, 10317, 10318, 10319, 10320, 10321, 10322, 10323, 10324, 10325, 10326, 10327, 10328, 10329, 10330, 10331, 10332, 10333, 10334, 1

**Title 5**

04/14/05 AMEND: 19836  
 03/24/05 ADOPT: 80307 AMEND: 80300, 80303, 80310, 80412 REPEAL: 80307  
 03/21/05 AMEND: 19828.1  
 03/02/05 AMEND: 55607, 59509 REPEAL: 55310  
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